



GLOVSKY & GLOVSKY LLC  
ATTORNEYS AT LAW

Miranda P. Gooding  
mgooding@glovskyx2.com  
Direct Dial (978) 720-3122

July 21, 2016

**BY HAND**

Dianne K. Bucco, Town Clerk  
Margaret Hoffman, Planning Coordinator  
Town Hall  
138 Main Street  
Wenham, MA 01984

***Re: Wenham Pines (56-60 Main Street)  
Application for Planning Board Special Permit and Site Plan Review***

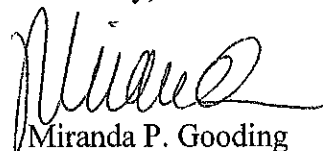
Dear Ms. Bucco and Ms. Hoffman:

On behalf of Wenham Pines, LLC, I enclose the following items in connection with the Wenham Pines project:

1. Ten copies of the completed Special Permit and Site Plan Review Application, together with accompanying narrative and exhibits;
2. Completed acknowledgment form regarding the Public Hearing Notice;
3. Authorization Letter from the property owner consenting to the filing of the applications;
4. Checks payable to the Town of Wenham in the amount (a) \$7500 representing the filing fees for this application, consisting of \$6500 for Flex Plan Special Permit project (\$1500, plus \$200/unit @ 25 units), plus \$1000 for Site Plan Review; and (b) \$5000 to be applied to the 53G account for the Planning Board and Conservation Commission peer review.

Ten (10) sets of the engineering, architectural and landscaping plans sets to accompany this application, along with the drainage calculations and traffic study will be delivered under separate cover the Planning Board.

Sincerely,



Miranda P. Gooding

MPG/Enclosures



**GATEHOUSE MEDIA NEW ENGLAND**  
**COMMUNITY NEWSPAPER COMPANY**  
**PATRIOT LEDGER/THE ENTERPRISE**  
**HERALD NEWS FALL RIVER**  
**TAUNTON GAZETTE**  
**P.O. Box 9113**  
**NEEDHAM, MA 02492-9113**

Date: July / 21 / 2016

I hereby acknowledge that the application I am submitting to the:

**TOWN OF WENHAM**

- |  |  |
|--|--|
| <input type="checkbox"/> Zoning Board Of Appeals | <input checked="" type="checkbox"/> Planning Board     |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Historic Districts Commission |
| <input type="checkbox"/> Other: _____            | <input type="checkbox"/> Board Of Selectmen            |

requires a notice of public hearing. Legal notices are currently submitted to the **WENHAM CHRONICLE** for publication on the following date(s): \_\_\_\_/\_\_\_\_/20\_\_\_\_: \_\_\_\_/\_\_\_\_/20\_\_\_\_

I hereby acknowledge **responsibility for payment** of the required legal notice to **GateHouse Media New England, d/b/a, Community Newspaper Company Inc.**

Printed name: Miranda P. Gooding, Esq., Attorney for Applicant

Signature: \_\_\_\_\_

Address: Glovsky & Glovsky LLC, 8 Washington Street

City/State/Zip Beverly, MA 01915

Phone: ( 978 ) 720 - 3122

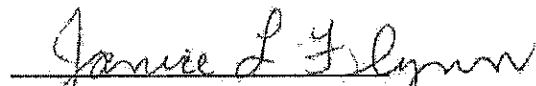
**Original copy to Town, copy to customer and copy to Legal Dept of Paper with ad copy.**

## AUTHORIZATION

**RE: Owner Assent to Submit Applications – 56 and 60 Main Street, Wenham**

To whom it may concern:

The undersigned, being the owner of the premises commonly known as 56 and 60 Main Street, Wenham, MA (being shown as Parcels 36 and 44 on Assessor's Map 27), hereby authorize **Wenham Pines, LLC** to submit applications relating to the permitting of a proposed Flexible Development residential project at the site to various agencies, boards and commissions of the Town of Wenham and Commonwealth of Massachusetts, including without limitation, Wenham Conservation Commission, Planning Board, Wenham Historic District Commission, Wenham Board of Health, Wenham Public Works Department, Wenham Building Department, Massachusetts Department of Transportation and Massachusetts Historical Commission.

  
Janice L. Flynn, Personal Representative  
of the Estate of William J. Flynn

July 6, 2016

**Atlantic Tambone**6 Kimball Lane  
Suite 300  
Lynnfield, MA 01940  
781-245-1515Salem Five Bank  
210 Essex Street  
Salem, MA 01970

3745

7/19/2016

Pay to the  
Order of

Town of Wenham

\$5,000.00

Five Thousand and 00/100\*\*\*\*\*DOLLARS

Town of Wenham  
138 Main St  
Wenham, MA 01984

⑈003745⑈ ⑆211370558⑆ 0899068605⑈

**Atlantic Tambone**6 Kimball Lane  
Suite 300  
Lynnfield, MA 01940  
781-245-1515Salem Five Bank  
210 Essex Street  
Salem, MA 01970

3744

7/19/2016

Pay to the  
Order of

Town of Wenham

\$7,500.00

Seven Thousand Five Hundred and 00/100\*\*\*\*\*DOLLARS

Town of Wenham  
138 Main St  
Wenham, MA 01984

⑈003744⑈ ⑆211370558⑆ 0899068605⑈



RECEIVED-TOWN CLERK  
WENHAM, MA 01984

2016 JUL 21 AM 11:02

# TOWN OF WENHAM

## PLANNING BOARD

### APPLICATION FOR PUBLIC HEARING

#### SPECIAL PERMIT

FEE: \$150

DATE: July 21, 2016

PHONE: See below

APPLICANT: Wenham Pines, LLC, c/o Miranda Gooding, Esq., Glovsky & Glovsky, LLC  
8 Washington Street, Beverly, MA 01915 (Tel. 978-720-3122); mgooding@glovskyx2.com

OWNER (if different): Janice L. Flynn, as Personal Representative of the Estate of William J. Flynn

c/o Daniel Doherty, Esq., MacLean Holloway Doherty, P.C.,

ADDRESS: 8 Essex Center Drive, Peabody, MA 01960 (Tel. 978-762-5813); ddoherty@mhdpc.com

#### NATURE OF APPLICATION:

(attach narrative and or plans as appropriate)

This is an application for Special Permits and Site Plan Review related to a proposed Flexible Development Project at 56 and 60 Main Street. The project consists of a phased 25-unit residential condominium which will be restricted to families 55 and over. The project will preserve approximately 74 percent of the site as contiguous open space, and will include two permanently restricted affordable units. Please see attached Addendum and Exhibits for additional information and details regarding the proposed project.

Applicable Section of Zoning Bylaw: Sections 11.0 (Flexible Development); Section 10.1.2 (Earth Removal);  
Section 12.2.5 (Flood Plain Overlay District); Section 7.1.3 (Permanent  
Project Sign); Section 13.5.2 (Site Plan Approval)

I hereby request a hearing before the Planning Board with reference to the above noted application. I understand I will be billed for the publication of the legal notice and have completed the attached acknowledgement.

WENHAM PINES, LLC, by its attorney,

Signed

  
Miranda P. Gooding, Esq.  
Glovsky & Glovsky LLC

***Addendum to Special Permit Application  
Wenham Pines Project***

**REQUESTED RELIEF**

Wenham Pines, LLC (“Applicant”) seeks the following relief for the premises situated at 56 and 60 Main Street, Wenham (collectively, the “Property”):

- (i) Special Permit under Section 11.0 of the Town of Wenham Zoning By-Law (the “By-Law”), approving the site plan set entitled “*Wenham Pines*” prepared for Wenham Pines, LLC by Hancock Associates Inc. dated July 19, 2016 (the “Flex Plan”) and authorizing the development of the Property with a cluster development consisting of 25 age-restricted residences and associated site improvements;
- (ii) Special Permit under Section 10.1.2 to allow earth removal activities in excess of 1000 cubic yards of earth;
- (iii) Special Permit under Section 12.2.5 for alterations to land in the Flood Plain Overlay District;
- (iv) Special Permit to allow permanent project sign under Section 7.1.3 of the By-Law;
- (v) Site Plan Approval under Section 13.5.2; and
- (vi) Such other relief that may be required to approve the proposed project.

**ATTACHED EXHIBITS**

Exhibit A	Host Community Agreement
Exhibit B	Conceptual Site Plan
Exhibit C	Narrative Description of Open Space Design Considerations
Exhibit D	Open Space Plan
Exhibit E	Open Space Calculation
Exhibit F	Form of Conservation Restriction
Exhibit G	Yield Plan
Exhibit H	Earth Removal Application Form

**ACCOMPANYING APPLICATION DOCUMENTS**

- Plan Set entitled “*Permit Site Plan, Flexible Development, Wenham Pines, 56/60 Main Street, Wenham, Massachusetts 01984*” prepared for Wenham Pines LLC, incorporating project plans prepared by Hancock Associates (Civil Engineer and Land Surveyor), Grazado Velleco Architects (Architect), and Ryan Associates Landscape Architect), dated July 19, 2016 and containing 62 sheets in total.
- Data Reports prepared by Hancock Associates dated July 19, 2016 containing drainage calculations and storm water management reports.
- Traffic Impact and Access Study prepared by Bayside Engineering, dated July 19, 2016.

*Addendum to Special Permit Application  
Wenham Pines Project*

**BACKGROUND**

The Applicant is a single purpose entity formed by the principals of Atlantic Tambone, Inc. (“Atlantic Tambone”) to purchase and develop the Property. Atlantic Tambone is the purchaser under a Purchase and Sale Agreement dated October 5, 2015 with the Estate of William J. Flynn (“Flynn”).

The Property consists of 56 and 60 Main Street (Map 27, Parcels 44 and 36 respectively). 56 Main Street includes an existing two-family home (ca. 1868), along with a garage and 3 sheds. 60 Main Street consists of the 9-hole golf course, club house (ca. 1965) together with associated parking areas. Both lots are situated in the Residential Zoning District and a portion of the Property (including all of the existing buildings) is located in the Wenham Historic District. All of 56 Main Street, and a portion of 60 Main Street, are located in the Aquifer Protection District and Flood Plain Overlay District.

The Property has been operated as The Lakeview Golf Course since approximately 1928 and has been owned and operated by the Flynn family since approximately 1972. The bulk of the Property is taxed as recreational land under Massachusetts General Laws Chapter 63B. The proposed conversion of the Property to residential use triggered the Town’s right of first refusal to purchase the Property under Chapter 61B. Atlantic Tambone, the Town and Flynn have entered into a Host Community Agreement providing in essence for a conditional tolling and waiver of the Town’s right of first refusal to purchase the Property so long as the Property is developed under the Flexible Development Bylaw and conforms to certain additional restrictions negotiated between the parties. A copy of the HCA, as amended, is attached hereto as **Exhibit A** for the Board’s reference.

**PROJECT SUMMARY**

The Applicant proposes to develop the Property as a phased, 25-unit residential condominium development, consisting of 11 new townhouse style buildings containing 23 market units, along with 2 newly renovated affordable units located within the existing house at 56 Main Street (collectively, with other site improvements, the “Project”). Approximately 80% of the site will be preserved in its existing open and undeveloped condition. A schematic rendering of the proposed project is attached hereto as **Exhibit B** for the Board’s reference.

In accordance with Sections 11.1.1 and 11.1.15.1 of the By-law, the proposed layout of the road and the homes on the Property have been developed after extensive review of the landscape and natural features of the site, with particular sensitivity to designating the appropriate location of the contiguous open space and to maintaining the mature trees on the Property as a natural buffer between Main Street and the new homes. A narrative summary of the design process and pertinent considerations, prepared by Ryan Associates, the landscape designer for the Project, is attached hereto as **Exhibit C**.

The following is a summary of the notable features of the Project in conformity with the Flex By-Law and the HCA:

***Addendum to Special Permit Application  
Wenham Pines Project***

- All 25 dwelling units in the Project shall be subject to a restriction requiring that there be in residence at least one person who has reached the age of 55, and that no resident may be under the age of 18.
- All newly constructed residences will be located at least 500 feet from Main Street, in order to preserve the current scenic views of the Property.
- Approximately 74% of the site, or roughly 24 acres, will be maintained as qualified “Contiguous Open Space” in accordance with the By-Law containing no more than 20% wetland area. The Open Space will be maintained by the Condominium Association as part of the common areas and facilities of the Condominium and will be subject to the terms of a permanent Conservation Restriction in favor of the Town.
- The proposed new residences will each have a master bedroom, living and dining areas, kitchen and den or family room on the first floor, and 2 bedrooms and a loft on the second floor, with a total of 2 1/2-3 1/2 bathrooms. Each unit will have an attached 2 car garage. The average floor area for each new residence, excluding the basement and garage, will be approximately 3000 square feet. The homes will have a New England traditional character and a color palette influenced by the natural colors of the site.
- The existing 2-family home on the Property will be remodeled and expanded to house q 2 permanently restricted affordable units, which will be limited for purchase to persons or families over 55 earning less than 50% of the area median income. The renovation will be historically sensitive and subject to review by the Historic District Commission.
- The Project will be served by a common septic system which will be owned and operated by the Condominium Association. The system will have a design flow of approximately 10,000 GPD, with sufficient capacity to serve the Project’s 74 bedrooms in total. The existing septic system serving the existing home and club house will be abandoned.
- A newly constructed roadway, “Pine Hill Road”, will be constructed in place of the existing club house curb cut and will provide access from Main Street to the development. Pine Hill Road is proposed to be 24-feet wide, with sidewalks, Cape Cod berm, and will be maintained as a private road by the Condominium Association. The road will allow for 2-way traffic.
- As set forth below, all design and dimensional criteria under Section 11.0 of the By-Law are satisfied or exceeded under the proposed Flex Plan.
- In addition to Planning Board review and approvals, the Project will require a Certificate of Appropriateness from the Historic District Commission; Order of Conditions from the Conservation Commission under the Wetlands Act and local by-law; Board of Health Septic Plan Approval, MassDOT Curb Cut Permit; and Massachusetts Historic Commission Project Notification Form. Applications for these permits will be pending contemporaneously with this application.

*Addendum to Special Permit Application  
Wenham Pines Project*

**FLEXIBLE DEVELOPMENT BY-LAW REQUIREMENTS**

**Design and Dimensional Standards**

Section 11.1.4 of the By-Law encourages applicants to modify lot size and other dimensional lot requirements for property developed as a Flexible Development. In this case, the Property is proposed to be developed in phases, but will ultimately be one lot held in condominium ownership. The following chart summarizes the applicable requirements under the By-Law and the proposed conditions when the Project is fully developed:

	<b>R District Requirement</b>	<b>Flex By-Law Requirement</b>	<b>Proposed</b>
Lot Area	40,000 SF	Flex	1,417,596 SF
Frontage	170 feet	Flex	519 feet (on Main Street)
Lot Width	100 feet	Flex	500 feet +/-
Front Yard	20 feet	Flex	20 feet (for existing home measured from Main Street)  (Typical setback of new homes from Pine Hill Road are at least 20 feet.)
Rear Yard	15 feet	7.5 feet	50 feet
Side Yard	15 feet	7.5 feet	20 feet  (Typical setbacks between the new buildings are at least 30 feet.)
Maximum Height	35 feet	Flex	35 feet
Maximum Lot Coverage	50%	Flex	Less than 20%
Parking	2 parking spaces/unit	2 parking spaces/unit	2 garage spaces/unit for new residences; 1 garage space/unit for converted residences; 2+ driveway spaces/unit
Minimum Contiguous Open Space	N/A	40%	74%  (See detailed explanation below.)
Buffer Area	N/A	50 feet along the perimeter of the Property	50 feet, except at the perimeter on Main Street where existing building is located

*Addendum to Special Permit Application  
Wenham Pines Project*

**Contiguous Open Space Requirement**

The proposed Open Space is shown on the plan attached as **Exhibit D**. About 80% of the Property will remain as undeveloped open space in the aggregate, and approximately 74% of the Project site meets the criteria for qualified “Contiguous Open Space”. The methodology for establishing the qualified Contiguous Open Space calculation is attached hereto as **Exhibit E**. The qualifying Open Space is exclusive of required yards and contains only 20% wetlands, considerably less than the maximum 50% within the Board’s discretion to approve.

In terms of the quality of the Open Space, the Project will convert this natural resource from its existing, heavily managed golf course use to a condensed residential development, allowing the vast majority of the site to revert to a more natural, self-sustaining balance of plant communities with limited intervention other than for walking trails, maintenance access, health and safety and some annual/biannual mowing.

The Open Space is proposed to remain as part of the common areas and facilities of the Wenham Pines Condominium, and the Condominium Association will own the Open Space. Proposed walking trails are shown on the Flex Plan. The Open Space will be subject to a recorded Conservation Restriction in favor the Town to ensure its perpetual maintenance as conservation and/or recreation land. A proposed form of Conservation Restriction is included as **Exhibit F**.

**Basic Maximum Number of Dwelling Units/Yield Plan**

In accordance with Section 11.1.7 of the By-Law, this Application includes a proposed Yield Plan, meeting the requirements of a preliminary subdivision plan under the Board’s regulations, which demonstrates that 18 lots could be developed on this site as a matter of right under existing zoning requirements and in conformity with applicable requirements relating to subdivisions, wetlands and septic design. See Plan entitled “Yield Plan” attached hereto as **Exhibit G**.

**Density Bonuses**

Section 11.1.8 of the By-Law provides that the Base Maximum Number of dwelling units may be increased above 18 if the Project qualifies for certain density bonuses. In this case the Project will qualify for a total of seven (7) density bonus units as follows:

- A. Base Maximum Number (BMN): 18 units
- B. Open Space Density Bonus: 3 units     A bonus of 5% of BMN (0.9) is awarded for every 10% over minimum 40% Open Space. Based on 74% Open Space proposed:  $3.4 \times 0.9 = 3.06 = 3$  units, rounded down
- C. Age Restricted Density Bonus: 4 units     A bonus of 1 unit for every 2 age-restricted units is awarded = 9 units; subject to maximum of 25% of BMN (4.5), rounded down = 4 units
- D. Maximum Unit Count: **25 units**

***Addendum to Special Permit Application  
Wenham Pines Project***

**Affordable Housing**

The Applicant intends to provide two (2) units of affordable housing in the Project, which will be restricted for sale to individuals or families having low incomes, as determined in accordance with applicable DHCD guidelines. This amounts to 10% of the Base Maximum Number of dwelling units in the Project, or  $10\% \times 18 \text{ units} = 1.8 \text{ units}$ , rounded up = 2 units.

The Applicant will comply with the affordable housing by providing the required affordable units on site in the existing 2-family home at 56 Main Street. As part of the overall Project, the existing house will be substantially gutted and renovated, and an addition will be constructed to expand the size of the 2<sup>nd</sup> floor unit. The proposed floor plans and elevation drawings depicting the renovated units, are included within the architectural drawing set.

The Applicant proposes to time the construction of the renovations of the existing house so that both affordable units will be complete and ready for marketing no later than the issuance of a certificate of occupancy for the 12<sup>th</sup> market rate unit, providing for a faster rate of construction of the affordable units than the market rate units.

**ADDITIONAL SITE PLAN AND SPECIAL PERMIT MATTERS**

*Traffic Study.* Also included in this Application package under separate cover is a traffic study prepared by Bayside Engineering evaluating existing and proposed traffic operations, concluding that the limited increase in traffic volume generated by the proposed development can be accommodated by the existing roadway system and that no specific mitigation is warranted.

*Storm Water and Drainage.* Storm water analysis and drainage calculations, prepared by Hancock Associates are provided under separate cover, and include detailed analysis of existing and proposed conditions, drainage analysis and calculations, together with an Inspection and Maintenance Program for the proposed storm water management system at the site. Storm water management and its compliance with the Massachusetts Storm Water Management Policy will also be reviewed by the Conservation Commission.

*Construction Phasing.* The Applicant proposes to construct the roadway and homes as a phased development with up to four (4) phases, as contemplated by the HCA. Proposed Phasing Plans will be provided during the public hearing process.

*Flood Plain Overlay District Special Permit.* Since the Project will involve alterations to land within Flood Zone AE, a special permit is required. As more particularly detailed on the project plans and in the Storm Water Analysis and Calculations, the Project has been designed to assure that flood damage is minimized, all utilities and facilities have been located to minimize or eliminate flood damage, and that adequate drainage is provided to reduce flood hazards.

*Earth Removal Special Permit.* The Project will involve grading and redistribution of approximately 10,200 cubic yards of earth. As demonstrated by the project plans and also as outlined in design process

***Addendum to Special Permit Application  
Wenham Pines Project***

narrative, the Flex Plan was developed to achieve the sensitive re-use of the site and its existing topography for residential use. Blasting is not proposed for this work and all cut and fill work will be performed to minimize nuisance, vibration, dust and other hazards in accordance with Section 10.1 of the By-Law. See **Exhibit H** attached hereto for additional information regarding proposed earth removal.

*Special Permit to Authorize Permanent Project Signage.* A permanent project sign is proposed to be located along Pine Hill Road, approximately 90 feet from Main Street. The wood panel sign will be approximately 2.5' high x 5' wide and will be mounted between two stone piers serving as the entry to the Project. As the sign will exceed two square feet in area, a special permit is required to authorize the sign. The proposed design is also subject to Historic District Commission review and approval.



## **EXHIBIT A**

## HOST COMMUNITY AGREEMENT

This Host Community Agreement (the "HCA") is entered into by and between the Town of Wenham (the "Town"), acting by and through its Board of Selectmen, Janice L. Flynn, as the Personal Representative of the Estate of William J. Flynn, along with its successors and assigns ("Seller") having its notice address at 5 Barker Road, Boxford, Massachusetts 01921, on behalf of themselves, their successors and assigns, and Atlantic Tambone, Inc., a Massachusetts corporation, and its successors and assigns, including any affiliate designated by it to acquire title to the whole or any portion of Lakeview (as hereinafter defined) ("Developer"). This HCA represents the understanding between the Town, the Seller and the Developer (the "Parties") with respect to a Notice of Intent to Convert to Other Use Pursuant to M.G.L. c. 61B, §9 (attached as Exhibit A) and the agreement by the Town to support the development described below.

### RECITALS

WHEREAS the Seller owns and intends to sell to the Developer a parcel of land known as Lakeview Golf Course ("Lakeview"), located at 56-60 Main Street, containing approximately 32.4 acres, and shown on Wenham Assessors Map #27 as parcels 36 and 44, and as further described in Deeds to William J. Flynn dated June 11, 1973, recorded in Book 5982, Pages 439, 444, 445, and 446 at the Southern Essex Registry of Deeds and attached hereto as Exhibit B; a part of which is subject to a Recreational Land Tax Lien recorded with the same registry in Book 11572, Page 147 and attached hereto as Exhibit C.

WHEREAS the Seller and Developer propose to convert the use of a portion of Lakeview and develop a residential condominium complex more particularly described in Section 1 below (herein, the "Project").

WHEREAS a portion of Lakeview is subject to the Town's Right of First Refusal under M.G.L. c.61B, §9.

WHEREAS the Town must, by February 16, 2016, send to the Seller either notice that the Seller's Notice of Intent to Convert to Other Use is deficient, or an appraisal of the portion of Lakeview that is subject to M.G.L. c. 61B, §9.

WHEREAS the Town possesses a material interest in exercising its Right of First Refusal to purchase the land subject to M.G.L. c.61B and will only consider electing to forego its right at this time provided Lakeview is developed as a "Flexible Development" pursuant to section 11.1 of the Zoning By-laws and in consideration of the other agreements with the Seller and the Developer outlined below.

WHEREAS the development of Lakeview as a "Flexible Development" is anticipated to take significantly longer than the time by which the Town must act pursuant to M.G.L. c. 61B, §9.

WHEREAS the Parties therefore wish to toll the time by which the Town must respond to the Seller's Notice of Intent to Convert to Other Use as herein provided.

WHEREAS the Seller and the Developer wish to enter into this non-regulatory HCA with the Town to memorialize their commitments through the alternate means discussed herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, the Parties, on behalf of themselves, their successors and assigns, hereby covenant and agree as set forth herein.

1. The initial term within which the Town may respond to the Seller's Notice of Intent to Convert to Other Use by either (a) sending notice that the Seller's Notice of Intent to Convert to Other Use is deficient, or (b) providing an appraisal of the portion of Lakeview that is subject to M.G.L. c. 61B, §9 is extended through February 16, 2016.

2. In the event that the Town does not act pursuant to Section 1, above, by February 16, 2016, the time within which the Town must respond to the Seller's Notice of Intent to Convert to Other Use shall be further tolled until the Seller or Developer sends written notice that it has obtained all permits and approvals for a Flexible Development pursuant to Section 7, in which case the lien shall be released as provided for therein, or the Seller or Developer provides written notice that it is reactivating the Notice of Intent to Convert to Other Use pursuant to Section 8, in which case the Town may pursue its options as outlined therein.

3. The Developer shall develop Lakeview only as a residential "Flexible Development," pursuant to section 11.1 of the Zoning By-laws of the Town of Wenham. Lakeview shall be developed substantially within the parameters shown on a plan entitled: "Proposed Flexible Development Plan" attached hereto as Exhibit D (the "Project Plan"), subject to the following terms and conditions:

a) The dwelling units in the Project may be developed in a combination of single-family, two-family and/or multi-family structures, and the final unit count shall be established in accordance with Section 11.1.10 of the By-Law.

b) All new buildings in the Project shall be sited within the areas shown as "Development Areas" on the Project Plan. No buildings or improvements (other than roadways and underground utilities in accordance with the By-Law) shall be developed outside of the Development Areas.

c) A minimum setback of 500 feet shall be maintained between Route 1A and any of the new homes in the Project. The foregoing setback

shall not apply, however, to any reconstruction, alteration or addition to the existing structures in Lakeview within the designated Development Areas shown on the Project Plan. The Developer shall retain the discretion to retain, modify, expand, demolish or reconstruct, in whole or in part, said existing structures as part of the Project, subject to the terms and conditions of the Required Permits (as that term is defined below).

d) A minimum of forty percent (40%) of Lakeview shall be maintained as contiguous Open Space. The Open Space shall be part of the common areas of the Project and shall be subject to a Conservation Restriction. This Conservation Restriction shall be provided in accordance with M.G.L. c.184, §§31-33, shall require that the Open Space be maintained in perpetuity in an open state and used for conservation, preservation of scenic vistas and private recreational use for the benefit of the residents of the Project, and shall otherwise be on terms reasonably acceptable to the Seller and the Developer.

e) It is intended that the roadway serving the development shall be constructed in the approximate configuration of the "Roadway" shown on the Project Plan.

f) The Project shall comply with all other applicable requirements of the Flexible Development By-Law, and all other state and local laws, ordinances, policies, and regulations governing the property, including without limitation, those pertaining to water conservation, wetlands, zoning matters, historic preservation, subdivision control, curb cuts and stormwater management.

g) The Project may be developed in phases.

h) The Parties acknowledge that the Project Plan has been prepared without the benefit of full engineering and design review. Therefore, the exact location and boundaries of the Development Areas, Open Space and Roadway are subject to refinement during the design and permitting phase.

4. The Developer shall not develop Lakeview under any otherwise allowable statute or by-law, including, but not limited to: M.G.L. c.40B, M.G.L. c.41, §§81K-GG (by right subdivision under the *Subdivision Control Law*), or any other development scheme that would otherwise be allowed or allowable under the Zoning By-laws of the Town of Wenham; *provided, however*, that this restriction shall not be deemed to restrict the Developer's ability to subdivide Lakeview under c.41, §§81K-GG, where such subdivision is necessary or convenient in conjunction with the financing of the Project, for the purpose of acquiring and developing the premises in multiple phases, and the plans and approvals for such phased acquisitions shall be deemed to be included within the Required Permits described below.

The Town further agrees that this Agreement shall not prohibit the Developer or its successors and assigns from proposing modifications to the Project after it is approved provided that such modifications are allowable under the Flexible Development By-Law as the same may be amended from time to time.

Notwithstanding the restriction contained in this Section 4, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Project by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Project in lieu of foreclosure, and provided that the holder of such mortgage has given the Town not less than ninety (90) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Project in lieu of foreclosure or other remedial action, and the Town has failed within such ninety (90) days to locate a purchaser for the Project who is capable of completing construction and development of the Project for the uses permitted under this Agreement and the Required Permits and who is reasonably acceptable to such mortgage holder, then the rights and restrictions herein contained shall not apply to such mortgage holder upon such acquisition of the Project or to any purchaser of the Project from such mortgage holder, and the Project shall thereafter be free from this restriction.

5. The parties acknowledge that the ultimate development of Lakeview as a Flexible Development depends, in part, on matters not presently within the Developer's full control (i.e. the Developer needs to obtain financing, and permits that have not been applied for yet). Nothing contained in Section 3 or Section 4 will be construed so as to obligate the Developer to actually construct a Flexible Development on the ground; these Sections instead serve to eliminate the availability of alternative forms of development.

6. The Developer shall implement all water conservation measures proscribed by the Wenham Water Department.

7. At such time as the Developer has received a Flexible Development Special Permit and all other necessary permits and approvals for the development described in Section 3 above, and all appeal periods have run, it shall send written notice of same to the Town. Within 10 days after receipt of such written notice, the Town shall issue to the Seller/Developer a Notice of Non-Exercise of its Right of First Refusal to remove the lien identified in Exhibit C and to release Lakeview from all rights to purchase under M.G.L c. 61B §9 in the form attached hereto as Exhibit E. It is understood and agreed that in the event of any inconsistency between the terms of the Flexible Development Special Permit and the terms of this Agreement, the terms of the Flexible Development Special Permit shall control and that the issuance of a Certificate of Occupancy with respect to any portion of the Project shall constitute certification by the Town that such portion of the Project is in compliance with all applicable terms of this Agreement.

8. The Developer or Seller may provide the Town with written notice that it is reactivating the Notice of Intent to Convert to Other Use attached as Exhibit A. This notice may be provided upon a denial of the Flexible Development Special Permit or any other necessary permit and approval for the Project described in Section 3 (the "Required Permits"), or if the Developer or Seller, for any reason, wishes to restart the M.G.L. c.61B, §9 process.

Upon receipt by the Town of such reactivation notice, the Town, within 20 days of receipt thereof, shall either: send notice to the Seller challenging the sufficiency of the Notice of Intent to Convert to Other Use, or shall send to the seller a copy of the Town's appraisal of the property subject to M.G.L. c. 61B, §9 (the Original Appraisal), the Seller shall have 20 days to notify the Town (the "Seller's Notice") that Seller is dissatisfied with the Original Appraisal and shall have an additional 30 days after delivery of the Seller's Notice to submit to the Town a second appraisal of the fair market value of the property subject to M.G.L. c. 61B, §9 (the "Second Appraisal") prepared by an appraiser selected by Seller at Seller's sole cost and expense. If within 30 days after the submission of the Second Appraisal to the Town, the Town and the Seller cannot agree on the fair market value of the land that is subject to M.G.L. c. 61B, §9, the Town and the Seller will jointly contract with a third mutually acceptable appraiser for a third appraisal of the fair market value of such land (the "Third Appraisal"), the cost of which will be borne equally by both the Town and the Seller. The Third Appraisal shall be delivered to the Town and the Seller as promptly as practicable and shall be binding on both Parties as the final determination of the fair market value of the property subject to M.G.L. c.61B, §9.

Upon agreement of a consideration, the Town shall then have 120 days to exercise its option. The Town may exercise the option only after a public hearing followed by written notice signed by the Board of Selectmen, mailed to the Seller by certified mail at the address specified below. Said notice of exercise shall also be recorded at the Essex County registry of deeds and shall contain the name of the Seller and a description of the property subject to M.G.L. c.61B, §9. The Town shall include with said notice a proposed purchase and sale contract or other agreement between the Town and the Seller which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the Seller, is returned by certified mail to the Board of Selectmen, or upon expiration of any extended period that the Seller has agreed to in writing, whichever is later.

Notwithstanding the foregoing, at any time following receipt of the Original Appraisal until such time as there is a final consideration, the Seller may revoke its Notice of Intent to Convert with no recourse to the Town, the Developer, or the Seller.

9. Upon receipt of the written notice of the reactivation of the Notice of Intent to Convert to Other Use, as provided for in Section 8 above, the Developer and the

Seller shall be released from all liability and from all obligations under Sections 3-6 of this Agreement.

In addition, the obligations contained in Section 4 shall automatically terminate upon the issuance of the Certificate of Occupancy for the last unit constructed as a part of the Project under the Flexible Development Special Permit.

In either case, the Town shall issue a certificate to the Seller in recordable form evidencing such termination promptly upon request, but in any event within 20 days of such request.

10. This HCA reflects the entire agreement between the parties. Any prior or simultaneous correspondence, understandings, agreements, and representations are null and void upon execution hereof, unless set out in this HCA.

11. This HCA shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

12. If any term or provision of this HCA, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this HCA, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, then in such event, this HCA shall be deemed void and without recourse to the parties hereto except that any action taken hereunder shall be rescinded by the parties hereto.

13. This HCA may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument.

14. All notices or requests required or permitted hereunder shall be in writing and addressed, if to the Town as follows:

Peter Lombardi, Town Administrator  
Town of Wenham  
Wenham Town Hall  
138 Main Street  
Wenham, MA 01984

With a copy to:

Thomas J. Harrington  
Miyares and Harrington LLP  
40 Grove Street  
Suite 190  
Wellesley, MA 02482

If to the Developer to:

Mark B. Glovsky  
Glovsky & Glovsky LLC  
Eight Washington Street  
Beverly, MA 01915

If to Seller to:

Janice L. Flynn, Personal Representative of the Estate of William J. Flynn  
5 Barker Road  
Boxford, MA 01921

With a copy to:

Daniel W. Doherty  
c/o MacLean Holloway Doherty, P.C.  
8 Essex Center Drive  
Peabody, MA 01960

Each of the Parties shall have the right by notice to the others to designate additional parties to whom copies of notices must be sent, and to designate changes in address. Any notice shall have been deemed duly given if mailed to such address postage prepaid, registered or certified mail, return receipt requested, on the date the same is received or when delivery is refused, or if delivered to such address by hand or by nationally recognized overnight courier service, fees prepaid, when delivery is received or when delivery is refused, or if transmitted by facsimile or other electronic means with confirmatory original by one of the other methods of delivery herein described, on the date so transmitted by facsimile or other electronic means.

15. The Developer and/or the Seller may assign their rights and obligations under this HCA to any other party or entity with the written permission of the Town, which shall not be unreasonably withheld, conditioned or delayed. The foregoing provision shall not be in derogation of the Developer's right to designate a nominee to take title to Lakeview or any portion thereof. Furthermore, the Town agrees that it shall not have the right to withhold consent to the Developer's assignment of rights hereunder to the Seller or to any substitute developer having experience with the development of residential projects of comparable size and scale to the Project so long as such developer produces evidence that it has secured construction financing from an institutional lender upon customary terms and conditions.

16. The PARTIES respectively represent and warrant that:



a. Each is duly organized and existing and in good standing, has the full power, authority and legal right to enter into and perform this HCA, and the execution, delivery and performance hereof and thereof (i) will not violate any judgment, order, law, bylaw or regulation, and (ii) do not conflict with, or constitute a default under, any agreement or instrument to which either is a party or by which either party may be bound or affected; and

b. This HCA has been duly authorized, executed and delivered; this HCA constitutes legal, valid and binding obligations of each party, enforceable in accordance with its terms; there is no action, suit or proceeding pending or, to the knowledge of either party, threatened against or affecting either wherein an unfavorable decision, ruling or finding would materially adversely affect the performance of any obligations hereunder, except as otherwise specifically noted in this HCA.

17. If and to the extent that either party is prevented from performing its obligations hereunder by an event of *force majeure*, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this HCA, the term *force majeure* shall mean the supervening causes described here, each of which is beyond the reasonable control of the affected party: acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, laws or orders of governmental or military authorities or any other cause similar to the foregoing, not within the control of such party obligated to perform such obligation.

18. Failure by the Town, the Seller or the Developer to perform any term or provision of this HCA shall not constitute a default under this HCA unless the Town, the Seller or the Developer fails to commence to cure, correct or remedy such failure within thirty (30) days of the receipt of written notice of such failure from a non-breaching Party and thereafter fails to complete such cure, correction or remedy within ninety (90) days of the receipt of such written notice, or, with respect to defaults which cannot be remedied within such ninety (90) day period, within such additional period of time as is required to reasonably remedy such default, if the Town, the Seller or the Developer, as the case may be, is exercising due diligence in the remedying of such default. No default by the Seller or the Developer shall ever result in the divestment or forfeiture of title or the creation of any lien.

19. This HCA shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

20. Upon the issuance and recording of the Notice of Non-Exercise of Right of First Refusal referred to in Section 7, if any, this HCA shall be recorded in the Essex County Registry of Deeds and appropriately indexed to the Lakeview chain of title, at which time the terms of this HCA shall be deemed to run with the land and shall bind all successors and assigns of the Seller and the Developer.

21. Upon request by any owner or mortgagee, or prospective owner or mortgagee, of any portion of Lakeview, the Town shall within thirty (30) days execute and deliver to such requesting party any document, including an estoppel certificate, which certifies compliance with the terms of this Agreement.

*[Remainder of page intentionally left blank]*

Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SELLER:

ESTATE OF WILLIAM J. FLYNN

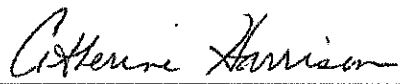
By: \_\_\_\_\_  
JANICE L. FLYNN, Personal Representative

DEVELOPER:

By: \_\_\_\_\_

TOWN:

TOWN OF WENHAM  
By its Board of Selectmen

  
Catherine Harrison

\_\_\_\_\_  
Jack Wilhelm

  
John Clemenzi

Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SELLER:

ESTATE OF WILLIAM J. FLYNN

By: Janice L. Flynn  
JANICE L. FLYNN, Personal Representative

DEVELOPER:

By: \_\_\_\_\_

TOWN:

TOWN OF WENHAM  
By its Board of Selectmen

\_\_\_\_\_  
Catherine Harrison

\_\_\_\_\_  
Jack Wilhelm

\_\_\_\_\_  
John Clemenzi

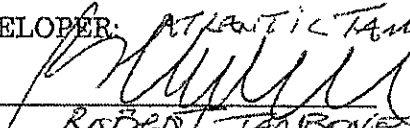
Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SELLER:

ESTATE OF WILLIAM J. FLYNN

By: \_\_\_\_\_  
JANICE L. FLYNN, Personal Representative

DEVELOPER: ATLANTIC TANKS, LLC

By:   
ROBERT TAMBONE, PRES.

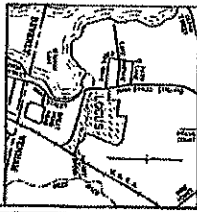
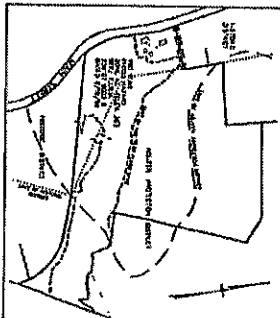
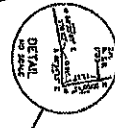
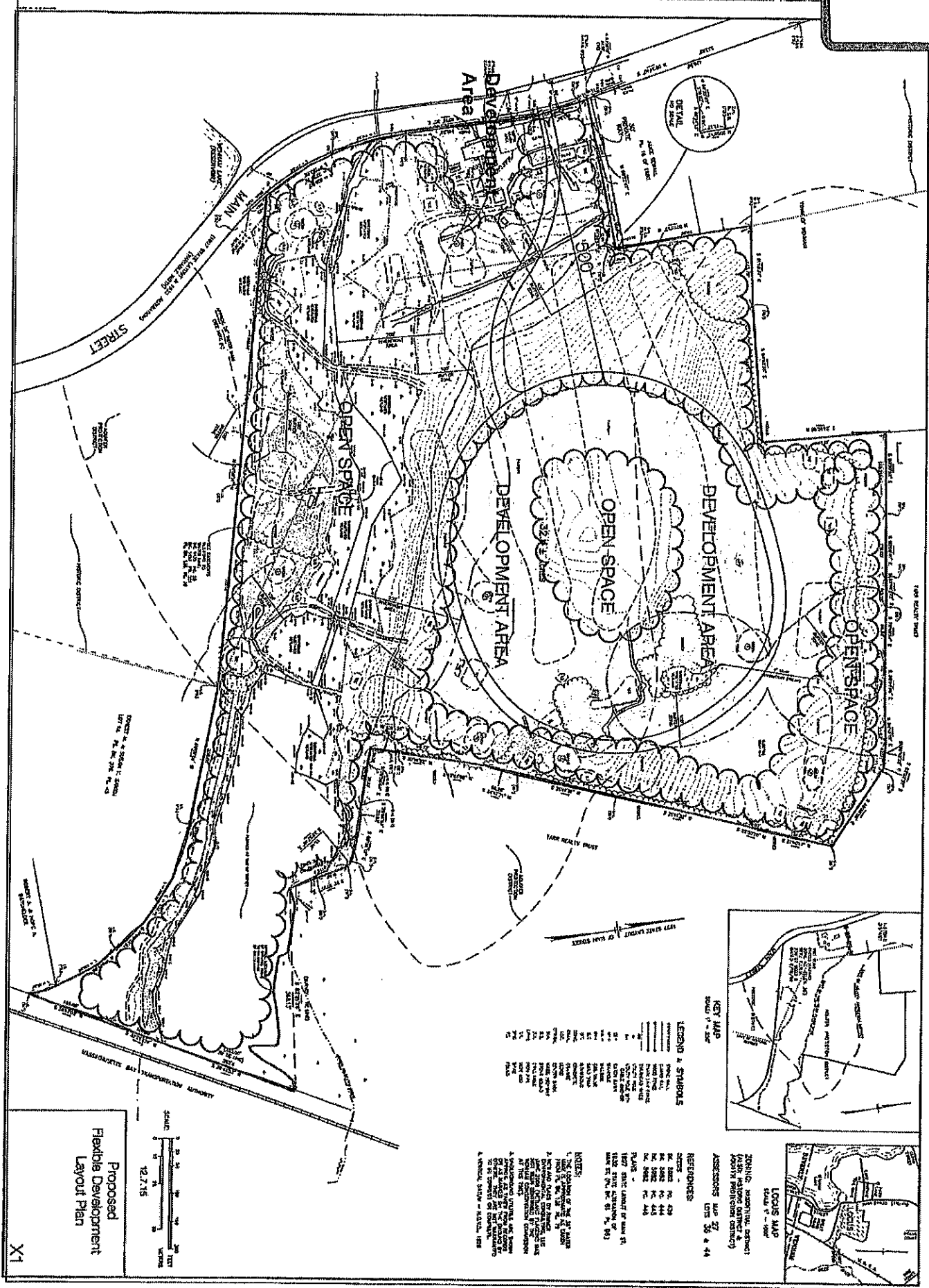
TOWN:

TOWN OF WENHAM  
By its Board of Selectmen

\_\_\_\_\_  
Catherine Harrison

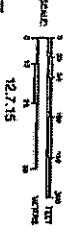
\_\_\_\_\_  
Jack Wilhelm

\_\_\_\_\_  
John Clemenzi



- LEGEND & SYMBOLS**
- Property lines
  - Development area
  - Open space
  - Street
  - River
  - Other symbols
- NOTES**
1. The project is located within the boundaries of the City of...
  2. The project is subject to the following conditions...
  3. The project is subject to the following conditions...
  4. The project is subject to the following conditions...
- REFERENCES**
- City of...
  - State of...
  - County of...

Proposed  
Flexible Development  
Layout Plan



## FIRST AMENDMENT TO HOST COMMUNITY AGREEMENT

WHEREAS the Town of Wenham (the "Town"), acting by and through its board of Selectmen, Janice L. Flynn, as Personal Representative of the Estate of William J. Flynn, along with its successors and assigns ("Seller") having its notice address at 5 Barker Road, Boxford, Massachusetts 01921, on behalf of themselves, their successors and assigns, and Atlantic Tambone, Inc., a Massachusetts corporation, and its successors and assigns, including any affiliate designated by it to acquire title to the whole or any portion of Lakeview (the "Developer") are parties to a Host Community Agreement ("HCA"); and

WHEREAS the HCA, among other things, provides for the tolling of the time in which the Town may exercise its right of first refusal pursuant to M.G.L. c.61B; and

WHEREAS the HCA, among other things, contains specific limitations on the manner in which Lakeview may be developed; and

WHEREAS the parties wish to amend the HCA to so that it reflects an additional condition pertaining to the development of Lakeview that was not memorialized in the original agreement.

NOW THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, the Parties, on behalf of themselves, their successors and assigns, hereby covenant and agree as set forth herein.

1. The HCA shall be amended by inserting between existing section 3.a) and existing section 3.b), a new section 3.a.i), to read as follows:

- a.i) All dwelling units in the Project shall be subject to a restriction requiring that there be in residence at least one person who has reached the age of 55, and that no resident (which shall not include periodic visits by those staying three months or less in any nine month period) may be under the age of 18.

2. Except as specifically amended hereby, the HCA is hereby ratified and confirmed and shall remain in full force and effect. From and after the date hereof, all references to the HCA shall be construed as references to the HCA as amended.

Executed this 2 day of FEBRUARY, 2016.

SELLER:

ESTATE OF WILLIAM J. FLYNN

By: Janice L Flynn  
JANICE L. FLYNN, Personal Representative

DEVELOPER:

Atlantic Coastal, LLC  
BY: [Signature]  
President

TOWN:

TOWN OF WENHAM  
By its Board of Selectmen

Catherine Harrison  
Catherine Harrison

Jack Wilhelm

[Signature]  
John Clemenzi



## SECOND AMENDMENT TO HOST COMMUNITY AGREEMENT

WHEREAS (1) the Town of Wenham (the "Town"), acting by and through its board of Selectmen and (2) Janice L. Flynn, as the Personal Representative of the Estate of William J. Flynn, along with said Estate's successors and assigns and their successors and assigns, as owners of the whole or any portion of the Lakeview property ("Property") as defined under a 2016 Host Community Agreement, as amended on February 2, 2016 ("2016 HCA") (hereinafter "Seller"), with a notice address at 5 Barker Road, Boxford, Massachusetts 01921, and (3) Atlantic Tambone, Inc., with a notice address of 6 Kimball Lane, Lynnfield, MA, a Massachusetts corporation, which intends to acquire all or a portion of the Property, and its successors and assigns, including any affiliate designated by it to acquire title to the whole or any portion of the Property (the "Developer") are and shall be parties to the 2016 HCA; and

WHEREAS, capitalized terms used in this Second Amendment and not otherwise defined shall have the meanings assigned to such terms in the 2016 HCA; and

WHEREAS the HCA, among other things, provides for a designated "Development Area" and "Roadway" in the approximate locations shown on the Project Plan attached as Exhibit D to the 2016 HCA; and

WHEREAS, Section 3(h) of the 2016 HCA contemplated that the Development Area and Roadway would be subject to refinement during the course of the design and permitting phases of the Project; and

WHEREAS, after consideration of existing site topography and landscaping and related due diligence, and with due regard for the preservation of existing vistas and trees on the property, the Developer has determined that the Development Area and Roadway should be modified as reflected on Exhibit D-1 attached hereto; and

WHEREAS, the Developer has requested and agrees and the Seller and the Town have agreed, that the Project Plan shall be amended to reflect the revised locations of the Roadway and the Development Areas as shown in Exhibit D-1, however, notwithstanding the dimensions shown on Exhibit D-1, a minimum setback of 500 feet shall be maintained between Route 1A and any new home in the Project and the minimum forty percent (40%) open space requirement shall be fully satisfied and shall be confirmed by as-built plans before occupancy permits are issued;

WHEREAS the parties wish to amend the 2016 HCA to substitute the new Project Plan as shown on Exhibit D-1, but with the dimensions required under the 2016 HCA to remain in full force and effect;

NOW THEREFORE, in consideration of the mutual promises of the parties contained herein and other good and valuable considerations, the receipt of which is hereby acknowledged, the Parties, on behalf of themselves, their successors and assigns, hereby covenant and agree as set forth herein.

1. The 2016 HCA shall be amended at ¶3, page 2 by deleting the reference to Exhibit D as attached thereto and by substituting in lieu thereof a reference to Exhibit D-1, which is attached to this Second Amendment as an exhibit and with the Project as set forth in Exhibit D-1 to continue to be subject to all of the dimensional requirements enumerated in the 2016 HCA at ¶3, page 2, subparagraphs (a) through (h) and thereafter.
2. Except as specifically amended hereby, the 2016 HCA is hereby ratified and confirmed and shall remain in full force and effect. From and after the date hereof, all references to the 2016 HCA shall be construed as references to the 2016 HCA as amended by this instrument.
3. A true copy of the 2016 HCA is attached hereto as Exhibit 1.

Exhibits:

Exhibit 1. The 2016 HCA, as amended on February 2, 2016.

Exhibit D-1. Project Plan, entitled "Proposed Flexible Development Layout Plan," prepared and signed and stamped by Vaclav Talacko, Professional Engineer, dated December 7, 2015, as revised through June 24, 2016.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

SELLER: ESTATE OF WILLIAM J. FLYNN

By: \_\_\_\_\_  
JANICE L. FLYNN, Personal Representative

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned Notary Public, personally appeared the above-named, Janice L. Flynn, who signed the foregoing document and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed above and who acknowledged to me she signed it voluntarily for its stated purpose on behalf of the Estate of William J. Flynn.

\_\_\_\_\_  
Notary Public  
My commission expires:

DEVELOPER: ATLANTIC TAMBONE, INC.

BY: [Signature]

ROBERT F. TAMBONE, President and Treasurer

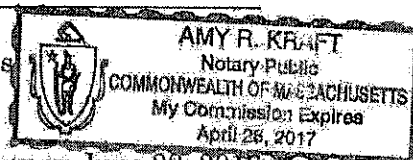
I, Robert F. Tambone, certify I am Secretary/Clerk of Atlantic Tambone, Inc. and, as Clerk, certify I am the President and Treasurer of Atlantic Tambone, Inc.

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 28<sup>th</sup> day of June 2016, before me, the undersigned Notary Public, personally appeared the above-named, Robert F. Tambone, who signed the foregoing document and proved to me through satisfactory evidence of identification, which was None, to be the person whose name is signed above and who acknowledged to me he signed it voluntarily for its stated purposes on behalf of Atlantic Tambone, Inc. and as President and Treasurer and Secretary/Clerk of Atlantic Tambone, Inc.

[Signature]  
Notary Public  
My commission expires



TOWN: TOWN OF WENHAM

By its Board of Selectmen By a vote duly taken at a posted meeting on June 28, 2016.

\_\_\_\_\_  
Catherine Harrison

\_\_\_\_\_  
Jack Wilhelm

\_\_\_\_\_  
John Clemenzi

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

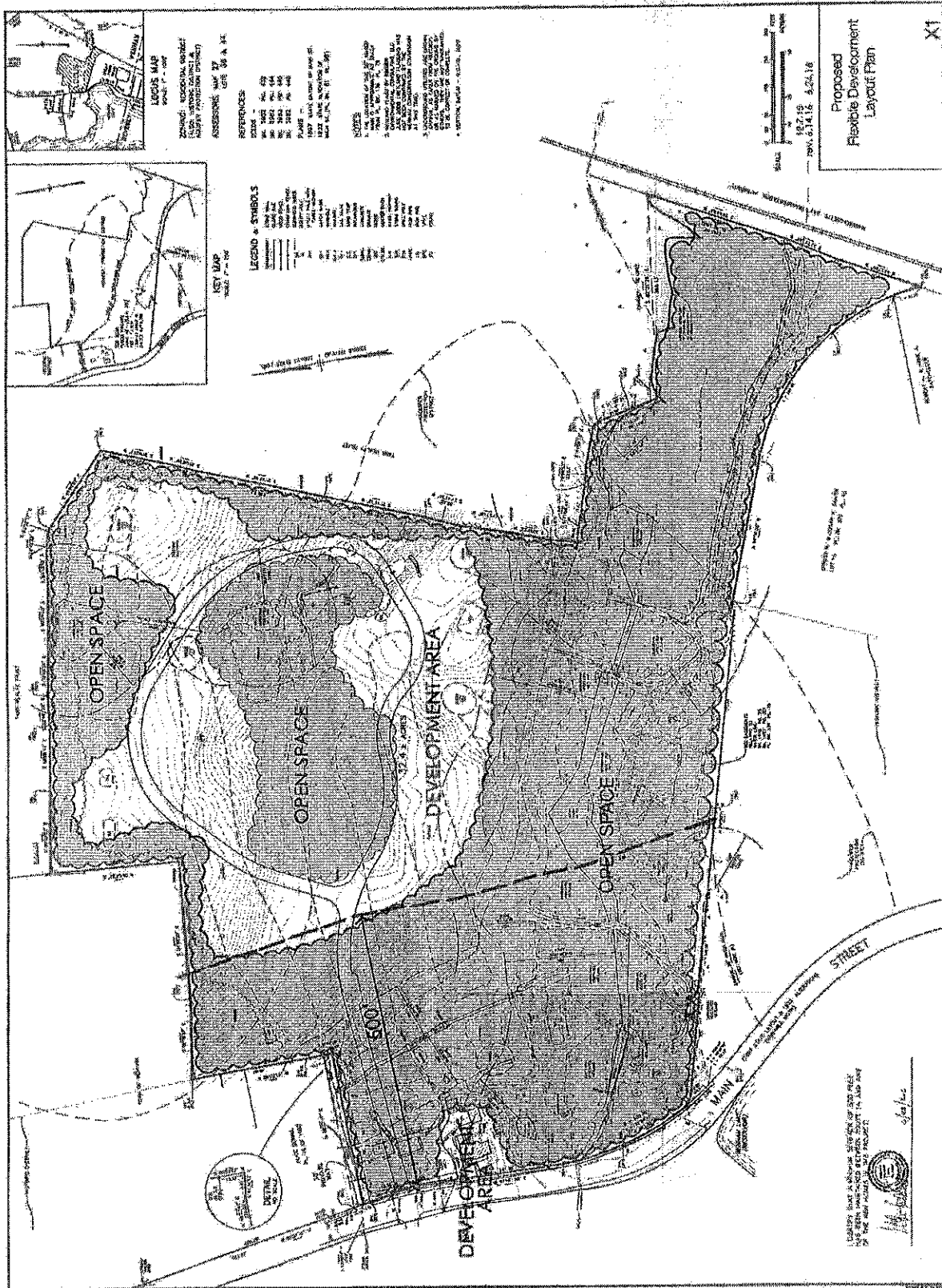
On this 28<sup>th</sup> day of June, 2016, before me, the undersigned Notary Public, personally appeared the above-named \_\_\_\_\_, a member of the Town of Wenham Board of Selectmen, who signed the foregoing document and proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed above and who acknowledged to me that s/he signed it voluntarily for its stated purpose on behalf of the Town of Wenham.

\_\_\_\_\_  
Notary Public  
My commission expires:

Title Certificate

I, \_\_\_\_\_, an attorney duly licensed in Massachusetts, hereby certify that I have reviewed the title to the Property as defined above, through the date and time of the execution of this document by the last signatory to the document, and certify, based upon that review, that all of the owners of record for the Property have executed this document.

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## **EXHIBIT B**



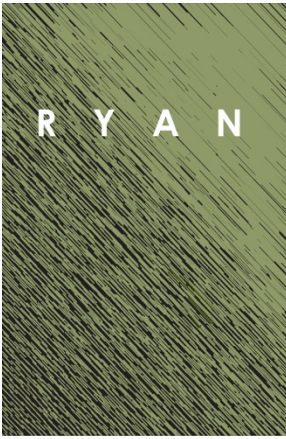


<b>PROJECT:</b> <b>WENHAM PINES</b>  56-60 Main Street Wenham, Massachusetts 01984	
<b>APPLICANT:</b> <b>WENHAM PINES, LLC</b>  6 Kimball Lane Lynnfield, MA 01940	
<b>OWNER:</b> <b>ESTATE OF WILLIAM J. FLYNN</b>  5 Barker Road Boxford, MA 01921	
<b>RYAN ASSOCIATES</b> LANDSCAPE ARCHITECTURE AND PLANNING  144 Moody St. Waltham, MA 02453  781-314-0401 ryan-assoc.com	
<b>REGISTRATION</b> 	
<b>ILLUSTRATIVE SITE PLAN</b>	



## **EXHIBIT C**





R Y A N

A S S O C I A T E S

L A N D S C A P E A R C H I T E C T U R E A N D P L A N N I N G

## WENHAM PINES — Design Process Narrative

### 1) *Understanding the Site: Existing Site Features*

Building 4

144 Moody Street

Waltham, MA 02453

PH: 781-314-0401

FX: 781-314-0401

#### Overview:

- Area: 32.4+/- acres
- Use: Golf Course since 1928, previously agricultural
- Key Site Features
  - Historic farmhouse
  - Alewife Brook, the intermittent stream, and associated wetlands
  - Mature trees between fairways

The site was developed as a golf course by the Batchelder family in 1928, prior to which it was open farmland. The Batchelder farm house still stands on the site along Main Street and is still used as a residence. Additionally, there are several more recent outbuildings, a small clubhouse, and parking lot for the golf course. These have no particular significance or particular merit of note. An existing stone wall separates the parking lot from Main Street. Historic photos reveal that a stone wall has existed in its location for at least a century. The site exists as a single parcel encompassing 32.5 +/- acres.

Topographically, the site rises from the intermittent stream and Alewife Brook to the northeast with approximately 60' of elevation change across the site. There are two bordering vegetative wetlands near the northeast corner. They are connected by a 6" drain.

The Alewife Brook flows across the southern edge of the site from Wenham Lake to the east to the Miles River. The Brook is the outlet from Wenham Lake, but today flows over an overflow/spillway of a small dam built in 1872 to increase the lake's capacity as a reservoir. The Brook flows through a culvert under Route 1A/Main Street across the site from west to east to the Miles River. The FEMA Zone follows the 39' contour on either side of the Brook with the wetland area generally falling within the 34' contour. Although no development is anticipated on the south side of the Brook, the golf course has four paths crossing the Brook that access several tees and greens located there together with maintenance paths and course irrigation equipment. Of historical interest, it is worth noting that a rail spur used to transport ice from Wenham Lake formerly crossed the site on the south side of the Brook. Some earthwork from the spur is still evident. A 36" water main also crosses the site on the south side of Brook; again, these areas will not be disturbed.

In addition to Alewife Brook, an intermittent stream flows from north to south to the Alewife Brook across the site roughly 250' to the east and parallel to Main Street. The flow of this stream comes from a drainage area which includes the Main Street Cemetery and a portion of the Wenham County Club to the north. It currently flows through a culvert located at the

property line shared with the private residence located at 62 Main Street between the site and the cemetery. The culvert is reportedly undersized and is proposed to be replaced as part of the Project. Additionally, a bridge crossing is proposed over the intermittent stream for primary site access. Mitigation for this crossing will need to occur elsewhere on site to replicate area taken by the bridge crossing.

Existing vegetation on site is consistent with its use as a golf course. The primary vegetative cover is the turf maintained for the greens, tee boxes, fairways, and rough. Turf species include bent grass, fescues, and bluegrass and rye. These areas are irrigated. The fairways are typically defined by rows of trees between the fairways and along the perimeter of the course. White pines are by far the most common species of tree between and along the fairways. Most have grown up in the open and have multiple trunks. Typically, the stability of large pines out in the open can be a cause of concern. While still a worry, it is less of a concern here since these trees have grown up in the open and are adapted to the prevailing winds. Their stability is as good as could be hoped. The health of these trees is generally good, although trees have been occasionally lost due to wind, other damage, or the needs of the course operations. The preservation of these trees is best achieved by preserving as many of the trees in each row as possible so as not to alter the exposure of any one tree. The trees along around the perimeter of the course are typical of New England woodlands and areas that have been left fallow and allowed to naturalize. Deciduous tree species dominate in these areas, primarily maples and oaks.

### **Summary:**

The primary site features include historic farmhouse, the character trees that frame the golf course, the Alewife Brook, the intermittent stream, and associated wetlands. These are the elements that together define the character of the site.

## **2) *Evaluating Site Context: Connections and Surrounding Land Uses***

### Overview:

- Route 1A / Main Street
  - Sidewalk and Bike Lane
- Abutters
  - Main Street Cemetery
  - Wenham Country Club
  - Wenham Lake
  - MBTA Rail Line
  - Single family residential
- Hydrology
  - Alewife Brook
  - Intermittent stream

The Lakeview Golf Course is a gateway site for the town, and, as its name suggests, it is located in view of Wenham Lake. It is situated on the east side of Main Street/Route 1A at a slight bend in the road where it skirts the lake just past the Wenham/Beverly town line. Beyond the Course to the north on the way to the town center is the Main Street Cemetery and the Wenham Country Club. Both are also on the east side of the street and both abut

the Lakeview Golf Course. The road itself has an ample paved shoulder in both directions that can serve as a bike lane. There is also a sidewalk on the east side of the street which extends from Beverly, past the site, the cemetery, the country club, and on into the town center.

Fiske Road is directly across Main Street to the west. It is part of a small neighborhood of about 30 homes together with Patti Lane and Lake Avenue. Two single family residences abut the property to the south and there is one single family residence located to the north at 62 Main Street between the clubhouse area and the Main Street Cemetery. The cemetery also abuts the property to the north along with the Wenham County Club which extends around the property to the east along with the commuter rail line. The MBTA tracks run along end of a panhandle shaped portion of the site at its easternmost edge. This panhandle area is nearly entire wetlands with the Alewife Brook flowing through its center.

As already noted, the proximity to Wenham Lake, the route of the Alewife Brook, the intermittent stream and its drainage area constitute the hydrology of the site and its hydrological connections. Today the Brook is bounded on site by the culvert under the MBTA rail line to the east and the culvert under Route 1A to the west. Wenham Lake is operated by the Salem Beverly Water Supply Board and is not publically accessible for recreation or other purposes.

The Lakeview Golf Course has offered public recreational opportunities since 1928. It is marketed as a par-3 course ideal for beginning and aging golfers and it is known that way in the community. Other than its frontage on the Main Street it has no other connections or public ways onto neighboring parcels. However the Main Street Cemetery is open dawn to dusk year around and the Wenham Country Club is open to its members and the public and includes an 18-hole course and a restaurant which is also open to the public.

### **Summary:**

The site is well-situated along Main Street / Route 1A at a prominent point near the entrance to Wenham from Beverly to the south. The abutting residential and public uses have made its long use as a golf course a strong contextual fit and its proposed use represents an equally strong fit. The presence of Alewife Brook, the outlet of Wenham Lake, makes the site hydrologically significant. Protecting the Brook within the Brook within the open space should be a key goal of any proposed plan.

### **3) *Designating the Contiguous Open Space: Areas to be Preserved on Site***

#### **Overview:**

- Wetlands
  - Alewife Brook and floodplain
  - Isolated vegetated wetlands
- Setbacks
  - 50' perimeter setback
  - 500' Route 1A setback
- Soils
- Existing trees

Any discussion of the open space wouldn't be complete without acknowledging that currently, under existing conditions, this is a fully developed site. The operations of maintaining a golf course exert a high degree of control over the whole of the site. On this site only a few small areas escape this level of attention. The proposed development will greatly curtail the extent of irrigation, mowing, fertilization, and pest-management regimens that are required to maintain the golf course. The project goals include setting aside a minimum of 40% of the site as open space per the Host Community Agreement (HCA) between the Town and the applicant. In fact, the applicant endeavored to set aside significantly more than the minimum 40% and the resultant design preserves more than 70% open space. This additional open space is intended as additional protection of the site character and as part of the yield analysis. As will be discussed elsewhere, the area of the open space is calculated to conform to the definition of "contiguous open space" in under the Flex Development By-Law wherein wetland areas, for instance, count toward the overall open space as a percentage not exceeding their overall percentage of the parcel area as a whole. Thus the actual areas designated and used as permanent open space will in fact exceed the percentage designated contiguous open space since it is not all credited on the same 1:1 basis.

In designating the contiguous open space areas the first areas to be identified include the wetland and FEMA Flood Zone areas and the building setback areas. The wetlands and Flood zone areas encompass roughly the southernmost third of the site, extending to the north along the intermittent stream. The non-wetland area of the parcel south of the Brook is quite minimal and very little falls outside of the wetland or other setbacks. For the purposes of this proposed project there is no reason to access this area by crossing the Brook, so this area is also best designated as open space. As previously noted, golf operations do cross the Brook so it is accessible for pedestrians and light maintenance purposes consistent with the uses and obligations associated with the open space to be borne by the eventual homeowners' association.

Site setbacks offer the second set of spaces that fall naturally into the open space category. The first is the 50' perimeter setback described in the Flexible Development by-law and the second is the 500' Route 1A setback negotiated as part of the Host Community Agreement (HCA) between the Town and the applicant. This setback is designed to preserve the character of Main Street by not placing new buildings within the immediate Rt1A view shed. The only residences in this area are those to be located in the historic farmhouse, the quality of which is to be preserved and enhanced.

Taken together, the wetland and associated floodplain areas and the dimensional setbacks, begin to describe an open space area that includes roughly the western and southernmost thirds of the site with open space areas extending along the property line to the north and east as well.

Additionally, the need to accommodate septic and storm water on site means that areas suited for these uses needs to be considered for inclusion as open space since these are permitted uses within the open space area. As it happens, on this site the relatively flat area in the middle of the site on the uphill end of what is currently the fourth fairway is where the best soils on site for location the septic system. The area here is large enough for both the project-sized field and an equal reserve area.

This area in the middle of the site on the fourth fairway completes the open space map. Roughly taken, the open space area so far described is a ring around site, wider to the south and west than around the north and east, with a sizable open space at the center. The remaining area—the development area to be discussed below—is ring within the northeast quadrant of the site. At a finer grain, the open space is more extensive still since as discussed above the rows of trees between fairways are worthy of protection to the fullest extent possible. Siting homes within the development area is all about locating sites within the existing fairways as will be discussed next.

### **Summary:**

The contiguous open space rings the site around a development area in the northeast corner of the site and includes a central area within the development zone. The open space area includes the wetland and floodplain areas, the wetland and site setback areas, and the areas suited for site septic and stormwater treatment. Within the development area the trees between the fairways should be preserved and the open space / development area further defined as the site plan is refined.

As noted, the treatment of these open space areas will diverge from how they are managed today. Within the open space the wooded areas will remain wooded and the areas immediately adjacent will be allowed to become wooded over time so that these areas might be expanded. Much of the rest of the area—the former fairways, greens, and tees will be allowed to become meadow-like with only occasional mowing so that they might become transition zones between the home landscapes and the wooded areas. Ground that is disturbed by construction in these areas will be re-seeded with turf and wildflower species that will be both visually interesting and drought tolerant. In this way the proposed project is distinguished by both the percentage of the site to be protected as open space and by what this change in development will mean for the local ecology and landscape quality of the area.

### **4) *Location of the Development Areas: Building Sites and Circulation***

#### **Overview:**

- Fairways
- Looped access
- Entrance
- Limited areas of disturbance
- Sidewalk
- Walking Path

As should be apparent by now the development area in terms of this project is really not about identifying a broad development zone, but identifying individual building sites. In this case the siting of ten two-unit buildings, one three-unit building, and the circulation to serve them. Site access requires an entrance road approximately 500' long through the 500' Route 1A setback. Its location needs to respect the preservation of the historic farmhouse and cross the intermittent stream at a point where disturbance can be minimized—upstream where the crossing is as narrow as possible.

The open space plan suggests a looped development area beyond the 500' entry drive—this is also advisable on a number of additional counts: first, from an emergency services perspective each residence will be accessible from two directions. In addition, this configuration will allow site utilities to be looped. Around that loop, the eleven new buildings are ideally placed within the fairways to the fullest extent possible to preserve the trees and the character of the site that they frame so well.

Since the topography of the site within the development area generally falls away to the south the building should also be sited such that the rear of the buildings are downslope and/or at least perpendicular to the slope. This orientation will allow for homes that do not look into the slope—a cut, but rather generally site comfortably within the existing topography. In this way site disturbance can be minimized and the homes can be situated with primary living spaces oriented toward views of the open space.

A continuous sidewalk will extend along the street and along the south side of the entrance road linking the residents of the new homes to the sidewalk along Main Street. A network of mown paths through the open space will provide additional routes to cross and allow residents to enjoy the site. One mown path will cross the central open space while another will skirt the wetlands behind the homes on the south side of the loop. These path are intended to be low impact and to provide a framework for quiet enjoyment of the open space. The mown quality of the path will also signal a level of care and maintenance within the overall light-handed open space maintenance regimen. Around the units themselves the lawn and shrubs will be irrigated and be maintained in a home landscape style.

**Summary:**

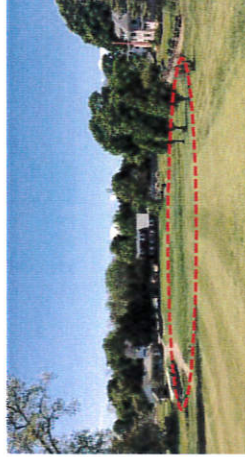
The development area strategy is one of locating individual building sites whereby the trees between fairways are preserved, the buildings can sit comfortably within the existing grades, and the homes can be oriented toward the open space. The site plan accounts for effective life safety and fire safety access, public and private utility layouts, and vehicular and pedestrian circulation.

**5) *Lot Lines***

As this project is proposed to be developed as a Condominium, no individual lots or accompanying lot lines are proposed.



## Existing Site Features



Intermittent Stream



Historic Farm House



Wetland / Alewife Brook



STEP 1:

## DESIGN PROCESS | Understanding the Site

07/19/16



### Existing Site Features



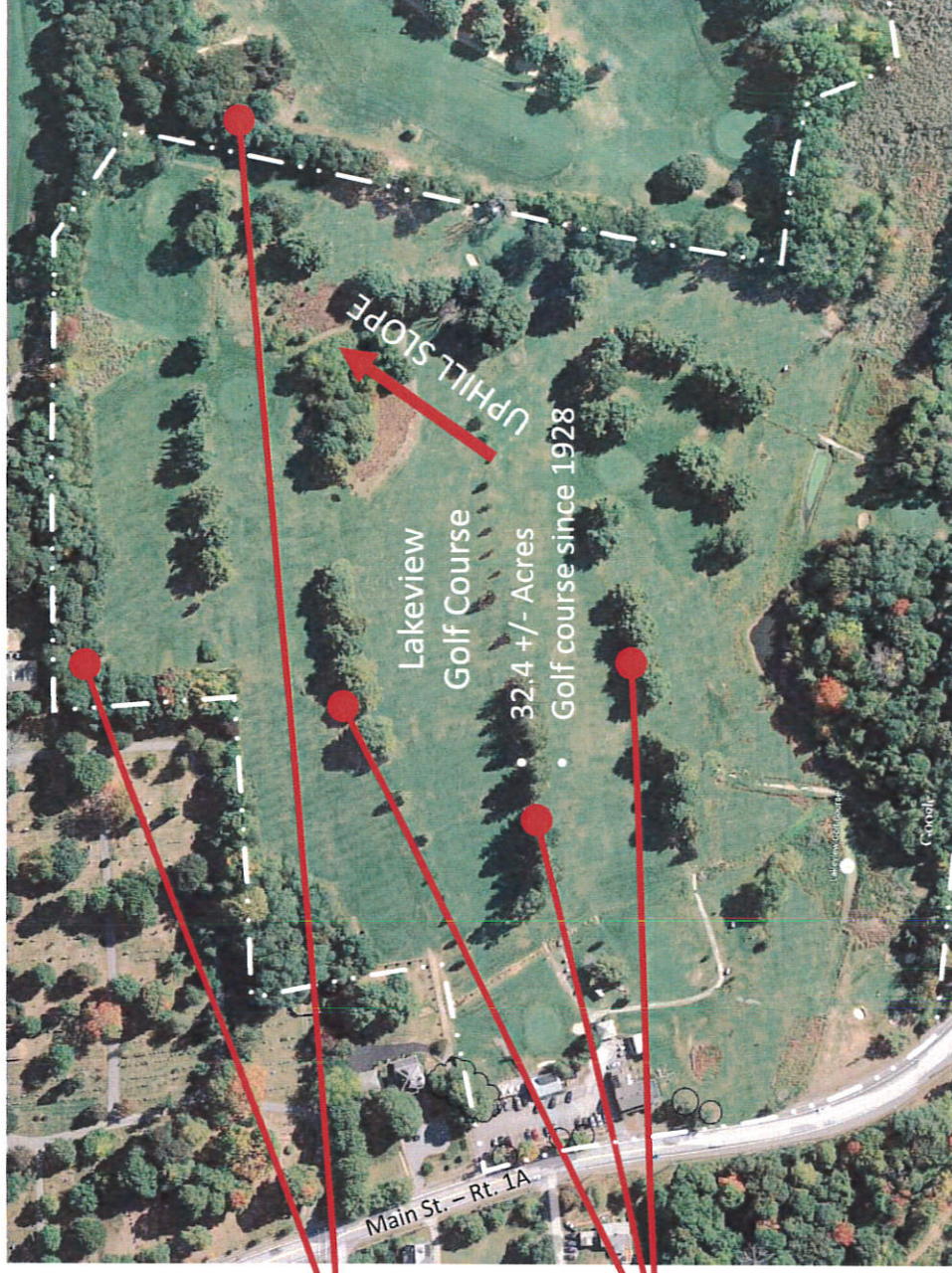
Tree Line around Edge



Existing Trees between Fairways



Uphill Slope



STEP 1:

## DESIGN PROCESS | Understanding the Site

07/19/16



## Connections & Surrounding Land Uses



Main Street Cemetery



Fiske Road Neighborhood + Direct Abutters



RT 1A / Main St.



STEP 2:

## DESIGN PROCESS | Evaluating Site Context

07/19/16



# Connections & Surrounding Land Uses



Wenham Country Club



Alewife Brook



MBTA RAILWAY



Wenham Lake



STEP 2:

## DESIGN PROCESS | Evaluating Site Context

07/19/16

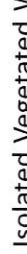


*Areas to be Preserved on Site*

Historic District Line



Isolated Vegetated Wetlands



500' Setback from Main St.



50' Side Setback



FEMA Floodplain



Best Soils for Septic



STEP 3:

**DESIGN PROCESS | Designating Open Space**

07/19/16



***Areas to be Preserved on Site***

Contiguous Open Space



Development Area



Historic Farmhouse



STEP 3:

**DESIGN PROCESS | Designating Open Space**

07/19/16



### ***Building Sites and Circulation***

Locate Building Sites within Fairway  
Areas between Existing Trees

- 23 New Condominium Homes
  - 10 Two-Unit Buildings
  - 1 Three-Unit Building

Historic Farmhouse

- 2 Flat Style Affordable Residences



STEP 4:

## **DESIGN PROCESS | Location of Development Area**

07/19/16



## Building Sites and Circulation

### Roadway

- 23 New Condominium Homes
  - 10 Two-Unit Buildings
  - 1 Three-Unit Building

### Historic Farmhouse

- 2 Flat Style Affordable Residences



STEP 4:

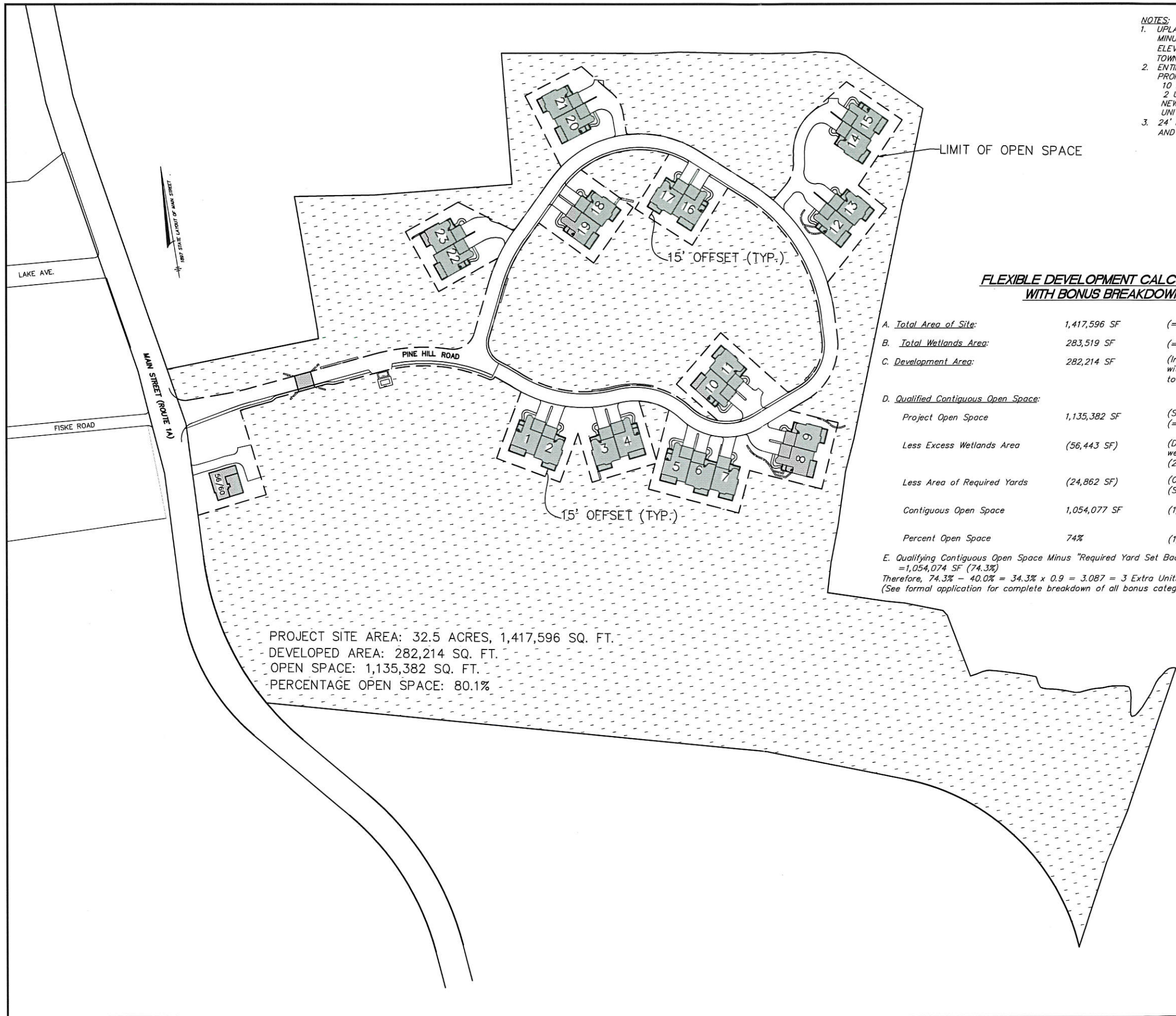
## DESIGN PROCESS | Location of Development Area

07/19/16

Wenham Pines

## **EXHIBIT D**



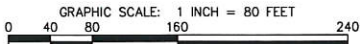


PROJECT SITE AREA: 32.5 ACRES, 1,417,596 SQ. FT.  
DEVELOPED AREA: 282,214 SQ. FT.  
OPEN SPACE: 1,135,382 SQ. FT.  
PERCENTAGE OPEN SPACE: 80.1%

- NOTES:
1. UPLAND AREA CALCULATED AS TOTAL LOT AREA MINUS AREA OF LOT BELOW FLOODPLAIN ELEVATION (ELEV. 39) (ZONING BY-LAWS OF THE TOWN OF WENHAM §5.2.2)
  2. ENTIRE PARCEL: 32.5± ACRES  
PROPOSED UNITS: 23+2 AFFORDABLE UNITS=25  
10 NEWLY CONSTRUCTED BUILDINGS  
2 UNITS IN EACH BUILDING AND 1 NEWLY CONSTRUCTED BUILDING WITH 3 UNITS
  3. 24' ROADWAY W/ CAPE COD BERM AND 4.5' BITUMINOUS CONCRETE SIDEWALK

**FLEXIBLE DEVELOPMENT CALCULATION  
WITH BONUS BREAKDOWN**

A. Total Area of Site:	1,417,596 SF	(= 32.4 acres)
B. Total Wetlands Area:	283,519 SF	(= 20% of Total Area)
C. Development Area:	282,214 SF	(Includes calculated area of land to be developed with roadway, driveways, buildings and areas to be maintained as exclusive use yards)
D. Qualified Contiguous Open Space:		
Project Open Space	1,135,382 SF	(Site Area - Development Area) (= 80% of site or about 26 acres)
Less Excess Wetlands Area	(56,443 SF)	(Difference between total site wetlands and 20% wetland area allowed (227,076 SF) - see Section 11.1.5.1)
Less Area of Required Yards	(24,862 SF)	(Calculated area of land within required yards) (See Section 11.1.2)
Contiguous Open Space	1,054,077 SF	(1,135,382 SF - 56,443 SF - 24,862 SF)
Percent Open Space	74%	(1,054,077/1,417,596)
E. Qualifying Contiguous Open Space Minus "Required Yard Set Backs" (24,864 SF)		
	=1,054,074 SF (74.3%)	
Therefore, 74.3% - 40.0% = 34.3% x 0.9 = 3.087 = 3 Extra Units (Rounding Down) (See formal application for complete breakdown of all bonus categories)		



PROJECT NAME:  
**WENHAM  
PINES**  
  
56 & 60 Main Street  
Wenham, MA 01984

APPLICANT:  
**WENHAM  
PINES  
LLC.**  
  
6 Kimball Lane  
Lynnfield, MA 01940

OWNER:  
**ESTATE  
OF WILLIAM  
J. FLYNN**  
  
5 Barker Road  
Boxford, MA 01921

**HANCOCK  
ASSOCIATES**  
  
Civil Engineers  
  
Land Surveyors  
  
Wetland Scientists  
  
185 CENTRE STREET, DANVERS, MA 01923  
VOICE (978) 777-3050, FAX (978) 774-7816  
WWW.HANCOCKASSOCIATES.COM

NO.	BY	APP	DATE	ISSUE/REVISION DESCRIPTION
1			7/19/2016	DESIGN BY: RAT
2				SCALE: 1"=80' DRAWN BY: JPC
3				APPROV. BY: VVT CHECK BY: RAT

**OPEN SPACE  
PLAN**

PLOT DATE: JUL 18, 2016 10:53 am  
PATH: F:\DWG 3D Projects\19400\DWG\

DWG: 19400C1 Open Space Calcs.dwg  
LAYOUT: OPEN SPACE  
SHEET: 28 OF 34

PROJECT NO.: 19400



## **EXHIBIT E**

### Contiguous Open Space Calculation

A. <u>Total Area of Site:</u>	1,417,596 SF	(= 32.4 acres)
B. <u>Total Wetlands Area:</u>	283,519 SF	(= 20% of Total Area)
C. <u>Development Area:</u>	282,214 SF	(Includes calculated area of land to be developed with roadway, driveways, buildings and areas to be maintained as exclusive use yards)
D. <u>Qualified Contiguous Open Space:</u>		
Project Open Space	1,135,382 SF	(Site Area – Development Area) (= 80% of site or about 26 acres)
Less Excess Wetlands Area	(56,443 SF)	(Difference between total site wetlands and 20% wetland area allowed (227,076 SF) – see Section 11.1.5.1)
Less Area of Required Yards	(24,862 SF)	(Calculated area of land within required yards) (See Section 11.1.2)
Contiguous Open Space	1,054,077 SF	(1,135,382 SF – 56,443 SF – 24,862 SF)
Percent Open Space	74%	(1,054,077/1,417,596)

## **EXHIBIT F**

Return to:

(SPACE ABOVE THIS LINE RESERVED FOR REGISTRY OF DEEDS USE)

---

*Wenham Pines Condominium*

**CONSERVATION RESTRICTION**

\_\_\_\_\_, AS TRUSTEE OF THE WENHAM PINES CONDOMINIUM TRUST, established u/d/t dated as of \_\_\_\_\_, 201\_ and recorded with the Essex Southern District Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_ (as amended the “Condominium Trust”), having an address of \_\_\_\_\_ (together with its successors and assigns, the “Grantor”), in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, hereby GRANTS to the TOWN OF WENHAM, MASSACHUSETTS, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, acting by and through its CONSERVATION COMMISSION, having an address of 138 Main Street, Wenham, Massachusetts, 01984 (the “Grantee”), pursuant to the provisions of G.L. c.40, §8C, as it may hereafter be amended, with QUITCLAIM COVENANTS, a perpetual Conservation Restriction, as set forth herein, on approximately 1,135,382 square feet of open space land contained in the Wenham Pines Condominium (the “Condominium”), located at 56-60 Main Street and 2-32 Pine Hill Road in Wenham, Essex County, Massachusetts, established by Master Deed dated \_\_\_\_\_, 201\_, and recorded with said Registry in Book \_\_\_\_, Page \_\_\_\_ (as such open space is more particularly described in Exhibit A and shown on Exhibit B attached hereto, the “Premises”).

**This Conservation Restriction is being granted and recorded in accordance with the terms of that certain Special Permit Decision issued by the Town of Wenham Planning Board (the “Planning Board”) dated \_\_\_\_\_, 201\_, and recorded with said Registry in Book \_\_\_\_\_, Page \_\_\_\_ (the “Special Permit”), and will satisfy the terms of Section 3(d) of that certain Host Community Agreement dated \_\_\_\_\_, 2016, and recorded with said Registry in Book \_\_\_\_\_, Page \_\_\_\_.**

**RECITALS:**

WHEREAS, the Condominium has been developed as a residential condominium development with the intent that approximately 80% of its total land area shall be maintained as permanently restricted open space pursuant to the Special Permit; and

WHEREAS, the Premises are visible to members of the general public from State Highway Route 1A and other public ways, and provide significant scenic and aesthetic value to the public as a natural, open space which has not been subjected to building development incompatible with said uses; and

WHEREAS, the Premises provides significant cultural and natural historic value to the public as an undeveloped open space which was historically used for farming and then maintained as a public recreational golf course since 1928;

WHEREAS, Grantor and Grantee recognize the uniqueness of the Premises as a distinctive Massachusetts landscape embodying the special character of the region in which the Premises are located, and containing a diversity of wildlife habitat, bordering vegetated wetlands, an intermittent stream and upland wooded areas, and being bounded by a brook, the protection of which in their natural state as provided herein will be a lasting benefit to the public and to both onsite and offsite resource areas; and

WHEREAS, Grantor and Grantee seek to create this Conservation Restriction in accordance with the provisions of M.G.L. c. 184, §§ 31-33 for the purpose of perpetually retaining the Premises in a predominantly scenic and open condition; and

WHEREAS, the Conservation Restriction hereby imposed will yield significant benefits due to the uniqueness of the Premises, and this Conservation Restriction is consistent with state and local conservation programs in the Town of Wenham, as evidenced by the approval of the Wenham Conservation Commission (the "Conservation Commission") as well as the Secretary of the Massachusetts Executive Office of Environmental Affairs.

NOW, THEREFORE, the Grantor, for itself and its successors and assigns, hereby covenants and agrees with the Grantee as follows:

1. Prohibited Acts and Uses. Except as otherwise expressly permitted herein, the Grantor will neither perform nor allow others to perform the following acts and uses, which are prohibited on, above and below the Premises:

(a) Constructing or placing of any temporary or permanent building, tennis court, landing strip, mobile home, swimming pool, fences, asphalt or concrete pavement, sign, billboard or other advertising display, antenna, utility pole, tower, conduit, line or other temporary or permanent structure or facility on or above the Premises;

(b) Mining, excavating, dredging or removing from the Premises of soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposit, except as necessary for proper drainage or soil conservation and then only in a manner which does not impair the purposes of this Conservation Restriction;

(c) Placing, filling, storing or dumping on the Premises of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste or other substance or material whatsoever or the installation of underground storage tanks;

(d) Cutting, removing or otherwise destroying trees, grasses or other vegetation, including, but not limited to, the commercial cultivation and harvest of forest products;

(e) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation;

(f) The use, parking or storage of motorized vehicles, boats, trailers, ATV's, motorcycles or campers except as necessary by safety officials in the performance of their official duties;

(g) Any further subdivision of the Premises or use of any portion of the Premises to satisfy any building or development requirements on this or any other parcel except as provided in Section 2 below;

(h) The storage or application of chemicals or pesticides, unless used for the purpose of controlling noxious, invasive or nuisance plants and animal species, and, if so used, then such use shall only be in connection with a plan approved by the Grantee;

(i) Any commercial, industrial, or institutional use, including commercial camping, fishing, hunting, trapping or recreation activities;

(j) Planting, release, cultivation, maintenance, or other activity that could be likely to result in the introduction, establishment, and/or enhancement of plant, animal, insect, or other species, that are more likely than not genetically modified or replicated or not native to the Commonwealth of Massachusetts;

(k) Hitching, standing, feeding, or grazing of livestock or animals at a distance of 100 feet or closer from the edge of any wetlands, surface water source, or tributary thereto; and

(l) Any other use of the Premises or activity, excluding those uses and activities reserved in Section 2 below, which in the reasonable judgment of the Grantee would materially impair the conservation interests that are the subject of this Conservation Restriction.

2. Exceptions to Otherwise Prohibited Acts and Uses. Notwithstanding anything to the contrary contained in Section 1 above, the Grantor, its successors and assigns, reserves the right to conduct or permit the following activities on the Premises:

(a) The installation, maintenance, repair and replacement of, and access to, the roadway, driveways, utilities and other infrastructure and related improvements (collectively, the "Common Facilities") on and adjacent to the Premises, and contemplated by that certain 25-

unit flexible development project described in the Special Permit, including without limitation the shared drainage, irrigation and sewage disposal systems, facilities for electric service, natural or propane gas, water, irrigation, drainage, cable, telephone and internet service, all in accordance with the Special Permit and the Order of Conditions issued by the Conservation Commission on \_\_\_\_\_, 201\_ (the "Order of Conditions"), and filed with the Registry in Book \_\_\_\_\_, Page \_\_\_\_; such Common Facilities shall include without limitation tanks, conduits, lines, pipes, infiltration systems, rain gardens, culverts, swales, rip rap, and erosion control and sedimentation systems and such activities to include without limitation any clearing, sloping, banking, grading, dredging, draining, loaming and seeding necessary therefor; *provided, however*, that should any such activity result in any damage to the Premises, Grantor shall restore the Premises to substantially the condition existing prior thereto;

(b) The installation, maintenance and replacement of, and access to and from, mailbox station, generator, and irrigation pump shed serving the Condominium, subject to the terms of the Special Permit and Order of Conditions, *provided, however*, that should any such activity result in any damage to the Premises, Grantor shall restore the Premises to substantially the condition existing prior thereto;

(c) Any activities designed to enhance the ecological or natural historic value of the Premises or to enhance the awareness of such values, including but not limited to the placing of benches and the erection of signs by the Grantor or Grantee identifying the Grantee as holder of the restriction and any limitations relating to public access;

(d) Any activities designed to maintain, preserve or conserve the Premises in their natural condition or in other such condition as they may be put in accordance with the terms hereof;

(e) Passive recreational uses, including, without limitation, hiking, sledding, snowshoeing, cross-country skiing, picnicking, fishing, bird watching and nature study; *provided, however*, that archery, riflery and hunting of any kind shall be strictly prohibited;

(f) The marking, clearance, use and maintenance of unpaved footpaths as shown on the plans approved in the Special Permit and Order of Conditions;

(g) Planting, re-planting, maintenance, and selective mowing, cutting or pruning of trees, shrubs, brush, lawn and other vegetation in and on the Premises in accordance with the landscape improvements and maintenance plan authorized by the Special Permit and Order of Conditions, and at such times as may be necessary to reasonably preserve and maintain the condition of the Premises;

(h) Such other activities not prohibited herein requested by the Grantor and expressly approved by the Grantee as are consistent with the purposes of this Conservation Restriction.

The exercise of any right reserved by Grantor under this Section 2 shall be in compliance with all applicable federal, state and local laws, regulations, by-laws and ordinances and the

terms of the Special Permit and the Order of Conditions. Notwithstanding anything to the contrary herein, any activities within the Premises that fall within the jurisdiction of the Conservation Commission shall require application to the Conservation Commission in accordance with M.G.L. Chapter 131, Section 40 and the Wenham General Wetlands Bylaw, or any successor statutes or by-laws.

3. Permitted Uses. All acts and uses not prohibited by Sections 1 or not permitted by Section 2 above are prohibited absent the express written consent of the Grantee stating that such activity or use is not inconsistent with the conservation purposes of this Conservation Restriction and thus authorized. Any request by the Grantor for approval of such an activity or use shall contain a detailed description of why such activity or use is not inconsistent with the conservation purposes of this Conservation Restriction. In the event the Grantee disapproves the requested activity or use, the Grantee shall provide a detailed description of why such activity or use is inconsistent with the conservation purposes of this Conservation Restriction.

4. Consistency with M.G.L. c. 184. The foregoing conservation restriction herein described is created pursuant to M.G.L. c. 184, §§ 31-33 and held pursuant to Article 97 of the Amendments to the Massachusetts Constitution for the purpose of maintaining the Premises in a predominantly scenic and open condition consistent with its intended use as conservation open space. The restrictions herein shall be construed so as to comply with said provisions of law.

5. Maintenance Responsibility of Grantee. Nothing herein contained shall impose any affirmative duty upon Grantee to maintain or care for the Premises.

6. Access.

(a) Access by the Grantee. The Conservation Restriction hereby conveyed does not grant to the Grantee, to the general public, or to any other person any right to enter upon the Premises; except there is granted to the Grantee and its representatives the right to enter the Premises at reasonable times, with reasonable advance written notice and in a reasonable manner for the purpose of inspecting the same to determine compliance herewith and preventing, abating or remedying any violations hereof.

(b) Access by the Public. Nothing in this instrument shall create or be deemed to create or permit access by the general public, in on or over any part of the Premises and the Grantee shall have no right to grant such access.

7. Easements Affecting the Premises. This Conservation Restriction is subject to all easements, covenants, restrictions and other matters of record affecting the Premises, and the rights granted to others therein, insofar as the same are currently in effect and applicable.

8. Legal Remedies of Grantee.

(a) The rights hereby granted shall include the right to enforce this Conservation Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that



Grantee may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to Grantee.

(b) In the event Grantee reasonably determines that Grantor is in violation of the terms of this Conservation Restriction (any such event being a “Violation”), Grantee shall serve written notice of such Violation upon Grantor, which notice (the “Violations Notice”) shall include a description of such Violation and shall state the date, time, and place of a public meeting therefor which shall be held to discuss the Violation, to be held not sooner than seven (7) days from the notice. Notwithstanding the foregoing, if the Violation is, in Grantee's reasonable discretion, causing imminent and material danger to public safety and/or imminent, material and irreparable harm to the conservation interest, including the scenic or environmental condition of the Premises, specifically with respect to the wildlife habitat or the wetlands, then the Violations Notice may include a demand for remedy or abatement of the Violation within a reasonable period (commensurate with the nature of the violation) following Grantor's receipt of the Violations Notice, failing which Grantee may immediately enter the Premises to remedy or abate the Violation and take other action reasonably required therefor (notwithstanding that the public meeting in connection therewith shall not yet have occurred). Furthermore, the foregoing shall not be deemed to limit or curtail the Grantee's power and authority to take any enforcement action otherwise within its jurisdiction under M.G.L. Chapter 131, Section 40 and the Wenham General Wetlands Bylaw, or any successor statutes or by-laws. In the event that a public meeting is held and the Grantor is ordered to act within a reasonable period (commensurate with the nature of the Violation), and the Grantor fails to comply within said period, then the Grantee may enter the premises to remedy or abate the Violation and take other action reasonably required therefore.

(c) Grantor covenants and agrees to reimburse Grantee for all reasonable costs and expenses (including without limitation reasonable counsel and engineering and survey fees and expenses) incurred in enforcing this Conservation Restriction or in taking reasonable measures (authorized hereunder or by law or in equity) to remedy or abate any violation hereof, provided that (i) it is acknowledged by Grantor in writing that a violation of this Conservation Restriction shall have occurred or that (ii) Grantee is the prevailing party in a resulting enforcement action.

(d) By its acceptance of this Conservation Restriction, Grantee does not undertake any liability or obligation relating to the condition of the Premises.

(e) Enforcement of the terms of this Conservation Restriction shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Restriction shall not be deemed or construed to be a waiver of such rights.

(f) If any provision of this Conservation Restriction shall be held invalid to any extent, the remaining provisions shall not be affected thereby.

9. Assignability.

(a) Running of the Burden. The burdens of this Conservation Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor and the successors and assigns of the Grantor holding any interest in the Premises.

(b) Execution of Instruments. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Restriction.

(c) Running of the Benefit. The benefits of this Conservation Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time: (i) as a condition of any assignment, the Grantee requires that the purpose of this Conservation Restriction continue to be carried out; (ii) the assignee, at the time of assignment, qualifies under Section 170(h) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder, and under Section 32 of Chapter 184 of the General Laws as an eligible donee to receive this Conservation Restriction directly; and (iii) the Grantee complies with the provisions required by Article 97 of the Amendments to the State Constitution.

10. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Restriction, in full or by reference, in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Premises, including without limitation, a leasehold interest. However, the failure to so incorporate by reference the terms of this Conservation Restriction shall not in any respect be deemed to cause a failure or impairment of the legal effect of this Conservation Restriction. The Grantor shall give prompt notice to the Grantee of any such transfer, but failure to give such notice shall not subject the Grantor to any liability.

11. Estoppel Certificates. Upon request by Grantor, Grantee shall, within thirty (30) days, execute and deliver to Grantor any document requested, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Conservation Restriction, and which otherwise evidences the status of this Conservation Restriction.

12. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Restriction would be appropriate, Grantor and Grantee may jointly amend this Conservation Restriction; provided that no amendment shall be allowed that will affect the qualification of this Conservation Restriction or the status of Grantee under any applicable laws, including Section 170(h) of the Internal Revenue Code of 1986, as amended, or Sections 31-33 of Chapter 184 of the General Laws of Massachusetts, or Article 97 of the Amendments to the Massachusetts Constitution, and any amendment shall be consistent with the purposes of this Conservation Restriction, and shall not affect its perpetual duration. Any such amendment shall be approved by the parties herein and recorded with the Essex Southern District Registry of Deeds.

13. Binding Effect; Interpretation. The burdens of this Conservation Restriction shall be deemed to run with the Premises, and shall be enforceable in perpetuity against Grantor,

Grantor's successors in title to the Premises, and any person holding any interest therein, by Grantee, its successors and assigns and its duly designated officers, directors, members, employees or agents as holders of this Conservation Restriction.

14. Effective Date. Grantor and Grantee intend that the rights, obligations and restrictions arising hereunder shall take effect upon its execution by Grantee and Grantor, its administrative approval pursuant to M.G.L. c. 184, § 32, and its filing with the Essex Southern District Registry of Deeds.

15. Miscellaneous. Approval of this Conservation Restriction pursuant to M.G.L. Chapter 184, Section 32 by any municipal officials and by the Secretary of Energy and Environmental Affairs is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Premises, and any such pre-existing rights of the public, if any, are not affected by the granting of this Conservation Restriction.

16. Recording. The Grantor agrees to record this instrument in timely fashion with the Essex Southern District Registry of Deeds.

17. Acts Beyond the Grantor's Control. Nothing contained in this Conservation Restriction shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Premises resulting from causes beyond the Grantor's control, including but not limited to fire, flood, storm and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Premises resulting from such causes.

18. Non-Merger. The parties intend that any future acquisition of the Premises shall not result in a merger of the Conservation Restriction into the fee. The Grantor agrees that it will not grant, and the Grantee agrees that it will not take title, to any part of the Premises without having first assigned this Conservation Restriction to a non-fee owner in accordance with Section 9(c) to ensure that merger does not occur and that the Conservation Restriction will be enforceable by a non-fee owner.

No documentary stamps need be affixed to this instrument.

Executed and sealed as of the day and year first above written.

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, as Trustee of Wenham  
Pines Condominium Trust, as aforesaid

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_ 201\_, before me, the undersigned notary public personally appeared \_\_\_\_\_, as Trustee of Wenham Pines Condominium Trust, proved to me through satisfactory evidence of identification, by showing me a copy of his identification, which was a Massachusetts driver's license, or personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose, as Trustee.

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Notary Public  
My commission expires:

ACCEPTANCE BY CONSERVATION COMMISSION

We, the undersigned, being a majority of the Conservation Commission of the Town of Wenham, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 201\_, the said Conservation Commission voted to approve and accept the foregoing Conservation Restriction pursuant to G.L. c.40, § 8C.

TOWN OF WENHAM CONSERVATION  
COMMISSION

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Member of the Town of Wenham, Massachusetts Conservation Commission, proved to me through satisfactory evidence of identification, by showing me a copy of his/her/their identification, which was a Massachusetts driver's license, or personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of the Town of Wenham, Massachusetts Conservation Commission

\_\_\_\_\_  
Notary Public  
My commission expires:

**APPROVAL BY BOARD OF SELECTMEN**

We, the undersigned, being a majority of the Board of Selectmen of the Town of Wenham, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 201\_, the Selectmen voted to approve acceptance of the foregoing Conservation Restriction by the Conservation Commission pursuant to G.L. c.40, §8C.

TOWN OF MANCHESTER-BY-THE-SEA  
BOARD OF SELECTMEN

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

ESSEX, ss.

On this \_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Member(s) of the Town of Wenham Board of Selectmen, proved to me through satisfactory evidence of identification, by showing me a copy of his/her/their identification, which was a Massachusetts driver's license, or personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

**APPROVAL BY SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Conservation Restriction to Town of Wenham, Massachusetts Conservation Commission has been approved in the public interest pursuant to M.G.L. Ch. 184, Section 32.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Matthew A. Beaton  
Secretary of Energy and Environmental Affairs

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 201\_, before me, the undersigned notary public, personally appeared Richard K. Sullivan, Jr., Secretary, proved to me through satisfactory evidence of identification, by showing me a copy of his/her/their identification, which was a Massachusetts driver's license, or personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:

**ACCEPTANCE BY PLANNING BOARD**

We, as a majority of the members of the Town of Wenham, Massachusetts Planning Board, hereby accept and approve the foregoing Conservation Restriction.

Dated: \_\_\_\_\_, 201\_\_

TOWN OF WENHAM PLANNING  
BOARD

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**COMMONWEALTH OF MASSACHUSETTS**

ESSEX, ss.

On this \_\_\_\_day of \_\_\_\_\_, 201\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, Member of Town of Wenham Planning Board, proved to me through satisfactory evidence of identification, by showing me a copy of his/her/their identification, which was a Massachusetts driver's license, or personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
My commission expires:



**EXHIBIT A**

The Premises

This Conservation Restriction shall apply to, restrict and encumber approximately 1,135,382 SF of land (the “Premises”) that is contained within the common areas and facilities of the Wenham Pines Condominium in Wenham, Massachusetts, established by a Master Deed dated \_\_\_\_\_, 201\_ and recorded with the Essex Southern Registry of Deeds in Book \_\_\_, Page \_\_\_, as amended of record. The Premises is shown as the “Open Space” on the Wenham Pines Condominium Site Plan dated \_\_\_\_\_, 201\_ recorded with the Registry as Plan \_\_\_ in Plan Book \_\_\_\_\_, and is also shown as the “Open Space” on the sketch plan attached hereto for reference as Exhibit B.

## **EXHIBIT G**



NOTE:  
1. UPLAND AREA CALCULATED AS TOTAL LOT AREA MINUS AREA OF LOT BELOW FLOODPLAIN ELEVATION (ELEV. 39) (ZONING BY-LAWS OF THE TOWN OF WENHAM SECTION 5.2.2)

RIGHT OF WAY=50'  
MINIMUM LOT SIZE (UPLAND AREA)=40,000 S.F.  
MINIMUM FRONTAGE=170'  
CUL DE SAC=140' DIAMETER

ENTIRE PARCEL: 32.5± ACRES  
PROPOSED LOTS: 18

PROJECT NAME:

WENHAM  
PINES

56 & 60 Main Street  
Wenham, MA 01984

APPLICANT:

WENHAM  
PINES  
LLC.

6 Kimball Lane  
Lynnfield, MA 01940

OWNER:

ESTATE  
OF WILLIAM  
J. FLYNN

56 & 60 Main Street  
Wenham, MA 01984

HANCOCK  
ASSOCIATES

Civil Engineers

Land Surveyors

Wetland Scientists

185 CENTRE STREET, DANVERS, MA 01923  
VOICE (978) 777-3050, FAX (978) 774-7816  
WWW.HANCOCKASSOCIATES.COM

3	TRD	RAT	7/8/16	LOT MODIFICATION
2	TRD	RAT	5/26/16	LOT MODIFICATION
1	JPC	RAT	3/14/16	PER PB COMMENTS
NO.	BY	APP	DATE	ISSUE/REVISION DESCRIPTION

YIELD  
PLAN

PLOT DATE: JAN 15, 2016 4:01 PM  
PATH: F:\CADD\2016\19400\19400.dwg

DWG: 19400 C2 YIELD PLAN 160708.dwg

LAYOUT: SITE PLAN\_1

SHEET: 1 OF 1

PROJECT NO.:

19400

C-1

## **EXHIBIT H**

**Wenham Planning Board**  
138 Main Street, Wenham, MA 01984

**Earth Removal Permit Application**

Applicant: <u>Wenham Pines LLC</u>	
Mailing Address: <u>6 Kimball Lane</u>	
Town/State/Zip: <u>Lynnfield, MA, 01940</u>	
Telephone Number: <u>781-245-1515</u>	Email: <u>ATambone@AtlanticTambone.com</u>
Property Owner: <u>Estate of William J Flynn</u>	
Mailing Address: <u>5 Barker Rd</u>	
Town/State/Zip: <u>Boxford, MA, 01921</u>	
Telephone Number: _____	Email: _____
Consultant/Engineer: <u>Hancock Associates</u>	
Mailing Address: <u>185 Centre St.</u>	
Town/State/Zip: <u>Danvers, MA, 01923</u>	
Telephone Number: <u>978-777-3050</u>	Email: <u>RTiano@HancockAssociates.com</u>
Excavation Company: <u>Currently Undetermined</u>	
Mailing Address: _____	
Town/State/Zip: _____	
Telephone Number: _____	Email: _____

Property Location: 56-60 Main Street, Wenham, MA

Assessor Parcel #: 36 & 44 / Map: 27                      Zoning: Residential

Property Size: 32.5 Acres

Aquifer Protection District: Yes \* No \_\_\_\_\_      W-District: Yes \_\_\_\_\_ No \_\_\_\_\_

Flood Plain: Yes \* No \_\_\_\_\_

## Earth Removal Permit Application

Present Use: Active 9-Hole Public Golf Course      Proposed Use: 25 Luxury Condominiums

Project Description: The proposed development is divided into (10) 2-Unit Duplex  
Condominium Units and (1) 3-Unit Triplex Condominium Unit plus the renovation of an  
existing 2 family farm house, into a 2-Unit Condominium residence with 2350 L.F. of 24' wide  
roadway with an adjacent sidewalk. Most of the trees on the site have been preserved.

Earth Removal Area (s.f. or ac.): 140,000 SF      Earth Removal Volume (c.y.): 10,200 CY

Earth Taken Off-Site: Yes \* No \_\_\_\_\_      Blasting: Yes \_\_\_\_\_ No \*

Truck Route: South on Main Street to Beverly, then take Route 95 Southbound.

Any trees greater than 6" dbh or major screening vegetation to be removed: Yes \* No \_\_\_\_\_

Provide a detail description of erosion control measures: Silt fence and Barriers, Infiltration Basin,  
Inlet and Outlet Protection Devices, Grading Strategies, and mulching.